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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 254.

THE UNION MUTUAL LIFE INSURANCE COMPANY, APPELLANT,

vs.

PHILANDER C. HANFORD AND ORRIN P. CHASE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 17, 1887.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, district judge of the United States for said northern district of Illinois, on Saturday, the tenth day of May, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred and third year.

WM. H. BRADLEY, *Clerk.*

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
PHILANDER C. HANFORD, ORRIN P. CHASE, FREDERICK FAKE, and LUCY DUNCAN FAKE. } In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the thirtieth day of March, 1878, came the complainant, by its solicitor, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, its bill of complaint in said above-entitled cause; which said bill is in the words and figures following, to wit:

2 *Bill.*

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

To the judges of the circuit court of the United States for the northern district of Illinois:

The Union Mutual Life Insurance Company, a corporation created by and existing under and by virtue of the laws of the State of Maine and which is a citizen of the State of Maine, brings this its bill of complaint against Philander C. Hanford, Orrin P. Chase, Frederick Fake, Lucy Duncan Fake, wife of the said Frederick Fake, all of Chicago, in said northern district, and citizens of the State of Illinois.

And thereupon your orator complains and says that on or about the 9th day of September, A. D. 1870, the said defendants, Philander C. Hanford and Orrin P. Chase, for value received, executed and delivered to Jacob L. Schureman two certain promissory notes, bearing date the said 9th day of September, to wit, one certain promissory note for the sum of five thousand dollars ($5,000.00), payable two years after the date thereof to the order of the said Schureman, with interest thereon at the rate of eight per centum per annum, and one other certain promissory note for the sum of six thousand dollars ($6,000), payable on or before the ninth day of September, A. D. 1873, to the order of said Schureman, with interest thereon at
3 the rate of ten per centum per annum; which said notes were given in part payment of the purchase-money for the land

and premises hereinafter described, which premises were sold and conveyed by the said Schureman to the said Chase and Hanford.

And your orator further shows unto your honors that, for the purpose of further securing the payment of the purchase-money aforesaid, with interest thereon, according to the tenor and effect of said promissory notes, the said Orrin P. Chase and Philander C. Hanford also at the same time executed and delivered to the said Jacob L. Schureman a certain indenture of mortgage under their respective hands and seals, bearing date the said ninth day of September, in the year eighteen hundred and seventy, and made or expressed to be made between the said Chase and Hanford, as party of the first part, and the said Jacob L. Schureman, as party of the second part, and thereby, after reciting as therein mentioned, it was witnessed that for the better securing the payment of the said sums of money mentioned in said promissory notes, with interest thereon, according to the tenor and effect of said promissory notes, and also in consideration of the further sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof was in said indenture acknowledged, the said Chase and Hanford did grant, bargain, sell, and convey unto the said Schureman and his heirs and assigns all the following-described lots, pieces, or parcels of land, situate in the county of Cook and State of Illinois, and known
4 and described as follows, to wit: Lots five (5) and six (6), in block three (3), of a subdivision of a part of the northwest fractional quarter of section twenty-two (22), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian, according to a plat of a subdivision thereof by the executors of Eliza Garrett, deceased, together with all the right, title, and interest of the said Chase and Hanford in and to the party wall standing on the north side of said lot five (5) and the south side of said lot (6):

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging or in anywise appertaining, unto the said Jacob L. Schureman and his heirs and assigns and to their only proper use, benefit, and behoof, but subject to the proviso therein contained; and said indenture of mortgage was upon the express condition that if the said party of the first part, their heirs, executors, administrators, or assigns, should well and truly pay or cause to be paid to the said party of the second part, his heirs, executors, administrators, or assigns, the aforesaid sum of money, with such interest thereon, at the time and in the manner specified in the above-mentioned promissory notes, according to the true intent and meaning thereof, then and in that case the said indenture of mortgage and everything therein expressed should be absolutely null and void; all of which
will more fully and at large appear by reference to said in-
5 denture of mortgage, now in the possession of your orator, ready to be produced and proved as your honors shall direct and to which for greater certainty your orator prays leave to refer.

And your orator further shows that the execution and delivery of said indenture of mortgage was afterwards, to wit, on the twentieth day of October, A. D. 1870, duly acknowledged, according to law, by

the said Orrin P. Chase and Philander C. Hanford before James J. Noble, a notary public, as by the certificate of acknowledgement endorsed upon said mortgage, signed by the said Noble as such notary public and attested by his notarial seal, will more fully appear by reference thereto.

And your orator further shows unto your honors that afterwards, to wit, on the twenty-first day of October, A. D. 1870, said indenture of mortgage was filed for record in the office of the recorder within and for the said county of Cook, and was duly recorded therein in Book 154 of Mortgages, at page 440, as by the certificate of Norman T. Gassette, the then recorder of said county, endorsed upon said indenture of mortgage, signed by said Norman T. Gassette as such recorder, sufficiently appears; to which certificate your orator prays leave to refer if it be necessary for him to do so.

And your orator further shows unto your honors that on or about the thirtieth day of January, A. D. 1871, the said Schureman assigned, transferred, and set over to your orator the said promissory notes and the said indenture of mortgage for a valuable con-
6 sideration, and that your orator has ever since been and is now the legal holder of said promissory notes.

And your orator further shows unto your honors that the said principal sum of money named in said two promissory notes was not nor was any part thereof paid to your orator at the time for that purpose appointed by the terms of said promissory notes according to the proviso of said mortgage or at any time before or since, but the said principal is still due to your orator and remains wholly unpaid, together with a very large arrear of interest accrued and due thereon to your orator, contrary to the proviso of said mortgage.

And your orator further shows unto your honors that on or about the fourteenth day of September, A. D. 1877, your orator paid and expended the sum of three dollars and thirty cents, and on or about the twenty-seventh day of September, A. D. 1877, the further sum of two hundred and twenty-three dollars and fifteen cents, and on or about the tenth day of October, A. D. 1877, the further sum of three dollars and thirty cents to redeem said land and premises from sales for delinquent taxes, for which expenditures your orator still holds the certificates of sale, and your orator claims that said expenditures were reasonable and proper and for the benefit of the whole estate in said premises, both of the mortgagors and their assigns and of the mortgagee and his assigns; that the said expenditures
7 are due and owing to your orator and are a proper charge upon said premises and are secured by said mortgage.

And your orator further shows unto your honors, upon information and belief, that said premises are now in the possession and occupancy of the defendants, Frederick Fake and Lucy Duncan Fake, the said Lucy claiming to hold the same under a deed from the said defendants, Chase and Hanford, and to be entitled to redeem the same, but they and also the said Chase and Hanford refuse so to do; that the premises are scant and insufficient security for the monies due and owing to your orator; that the said Frederick Fake

and Lucy Duncan Fake, as well as the other defendants, have neglected for a long time to pay the taxes and assessments upon said property and have suffered the same to be sold for unpaid taxes and assessments, to the prejudice of your orator's security therein; that the said premises are capable of yielding rent, and that the said occupants ought either to pay a reasonable rent for the use and occupation of said premises to a receiver for that purpose to be appointed herein or else to vacate the premises and allow them to be rented to some person who would pay a fair and reasonable rent for the same.

And your orator charges that the interest the said Frederick Fake and Lucy Duncan Fake have, if any they have, in said
8 premises or any part thereof accrued subsequent to the lien of your orator under said mortgage and is subject thereto, and that they ought either to pay what is due and owing to your orator as aforesaid or to release their equity of redemption in said premises, but they refuse so to do.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed,—full, true, and perfect answer make (not under oath, answers under oath being hereby waived) to all and singular the premises as fully and particularly as if the same were hereinafter repeated.

Your orator prays that said mortgage be foreclosed, and that an account may be taken, under the direction of this court, of what is due and owing to your orator from principal monies, interest, and expenditures on said mortgage and notes, and that the said defendants may be decreed to pay to your orator what shall be found due to it on taking such account, together with its costs of suit, by a short day to be appointed by this honorable court for that purpose, or in default thereof that said premises may be sold by and under the direction of this court according to the rules and practice of this court and the proceeds of such sale be applied to the payment of the amount due your orator as aforesaid, with all costs and
9 expenses, and that the said defendants and all persons claiming under them subsequent to the commencement of this suit may be foreclosed and barred from all equity of redemption or claim of, in, and to said mortgaged premises and every part thereof, and that in the meantime a proper person be appointed receiver, collect, get in, and receive the rents and profits arising from said mortgaged premises, and to hold and pay over the same upon the order of the court herein to the credit of this cause, and that your orator may have a decree for any balance of money that may be found due your orator over and above the proceeds of said sale, and that your orator may have such further and other relief in the premises as to your honors shall seem meet and the nature of this case may require.

May it please your honors to grant unto your orator the most gracious writ of subpœna of the United States of America, to be directed to the said Philander C. Hanford, Orrin P. Chase, Frederick Fake, and Lucy Duncan Fake, thereby commanding them and every one of them, at a certain day and under a certain pain therein to be

specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet; and your orator will ever pray, &c.

10 UNION MUTUAL LIFE INSURANCE COMPANY,
By ROBERT B. KENDALL, *Its Solicitor.*

ROBERT B. KENDALL, *Of Counsel.*

Endorsed: Filed March 30, 1878. Wm. H. Bradley, cl'k.

11 On the same day, to wit, on the thirtieth day of March, 1878, there issued out of said clerk's office a writ of subpœna in said entitled cause; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

The United States of America to Philander C. Hanford, Orrin P. Chase, Frederick Fake, and Lucy Duncan Fake, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of May next, to answer the bill of complaint of the Union Mutual Life Insurance Company this day filed in the clerk's office of said court in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the
[SEAL.] Supreme Court of the United States of America, at Chicago
aforesaid, this 30th day of March, in the year of our Lord
12 one thousand eight hundred and seventy-eight, and of our Independence the 102d.

WM. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within writ within my district in the following manner, to wit: Upon Philander C. Hanford, therein named, on the 2 day of April, A. D. 1878; also upon Orrin P. Chase, therein named, on the 2 day of April, A. D. 1878; also upon Lucy Duncan Fake, therein named, on the 2 day of April, A. D. 1878, by personally delivering to each of them a true copy of the same on the aforesaid day. I also served the same upon the following-named defendant, not having been able to find him to serve personally, by leaving a true copy for him at his usual place of abode with an adult person and a member of his family, to wit, upon Frederick Fake, on the 2 day of April, A. D. 1878, with his wife.

J. S. HILDRUP,
U. S. Marshal,
By D. D. SABIN, *Deputy.*

(Endorsed:) Filed Apr. 10th, A. D. 1878. W. H. Bradley, clerk.

13 Afterwards, to wit, on the nineteenth day of April, 1878, came the defendants, by their solicitors, and filed in said clerk's office their appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance.

Circuit Court of the United States. March Term, A. D. 1878.

PHILANDER C. HANFORD, ORRIN P. CHASE, Impleaded, &c., *ads.* UNION MUTUAL LIFE INSURANCE COMPANY. } In Chancery.

The clerk of the court will please enter the appearance of the defendants, Chase & Hanford, in this cause by us as their solicitors.
Dated Apr. 19th, 1878.

FAIRCHILD & BLACKMAN,
Sol'rs for s'd Def'ts.

To Wm. H. Bradley, clerk, &c.

Endorsed: Filed Apr. 19, 1878. Wm. H. Bradley, cl'k.

14 Afterwards, to wit, on the thirteenth day of May, in the adjourned May term of said court, 1878, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE UNION MUTUAL LIFE INSURANCE COMPANY *vs.* PHILANDER C. HANFORD *et al.* } In Chancery.

Now comes the complainant, by its solicitor, and it appearing to

the court that the defendants, Frederick Fake and Lucy Duncan Fake, had been duly served with process and had failed to appear and answer the complainant's bill of complaint herein in conformity with the rules and practice of this court, and they, being now each three times solemnly called, come not, but make default. It is thereupon considered by the court that their defaults be entered, and that the complainants' bill of complaint herein and the matters and things therein contained be taken as confessed and true as against them.

15 Afterwards, to wit, on the 28th day of May, 1878, came P. C. Hanford and Orrin P. Chase, by their solicitors, and filed in said clerk's office their answer in said entitled cause; which said answer is in the words and figures following, to wit:

NORTHERN DISTRICT OF ILLINOIS, *ss:*

In the Circuit Court of the United States.

THE UNION MUTUAL LIFE INSURANCE COMPANY, Comp.,
vs.
PHILANDER C. HANFORD, ORRIN P. CHASE, Impleaded with Frederick L. Fake and Lucy Duncan Fake, Def'ts. } In Chancery.

The joint answer of the defendants, P. C. Hanford and Orrin P. Chase, to the bill of complaint of the Union Mutual Life Insurance —, complain-t.

These defendants, now and at all times hereafter reserving all manner of benefit and advantage to themselves of exception to the many errors and insufficiencies in said bill contained, for answer thereunto or unto so much or such parts thereof as these defendants are advised it is necessary to answer unto, answering, say:

16 Paragraph one. They admit the execution and delivery to Jacob S. Schureman of the two notes and mortgage in said bill mentioned in manner and form as therein charged, and that said Schureman assigned said notes and mortgage to the complainant, as alleged therein.

Paragraph second. They admit the non-payment of the principal of said notes and of some part of the interest thereon and of the taxes assessed upon the mortgage- property, as stated in said bill, in manner and form as therein charged, but they do not admit that the amount claimed in said bill to be due on said notes is correct, and leave the complainant to make proof thereof.

Paragraph third. And for a further answer these defendants say that on the 9th day of September, in the year A. D. 1872, they sold the premises in said mortgage described to Frederick L. Fake and Lucy Duncan Fake for the sum of twenty-five thousand dollars, and by their warranty deed of that date, duly executed and acknowledged on the 18th day of September before James A. Marshall, a notary public, and recorded in Book 192, on page 231 of the records of

deeds of Cook county, on the 20th day of said September, conveyed to Lucy D. Fake the premises aforesaid, as by said warranty
17 deed will more fully and at large appear, and to which these defendants refer; that said Lucy D. Fake, as a part of the above consideration in said deed, expressly agreed with these defendants to assume and pay the aforesaid two promissory notes and the accruing interest to said complainant, and to surrender the same to them paid and cancelled when the same should severally become due—that is to say, the six-thousand-dollar note on the 9th day of September, A. D. 1873, and the five-thousand-dollar note on the 9th day of September, A. D. 1874, to which date the time of payment of said note had been extended by said complainant for the consideration of one hundred and fifty dollars, paid on the 9th of September, A. D. 1872, by these defendants to complainant for that purpose; that said complainant on said 9th day of September had full knowledge of the agreement above recited between Lucy D. Fake and these defendants to pay said notes; that said complainant on the 9th day of January, A. D. 1875, in consideration of the sum of three hundred and forty dollars to it paid by said Lucy D. Fake, extended the time of payment of *of* the five-thousand-dollar note from September 9th, 1874, to September 9th, 1875, and the time of payment of the six-thousand-dollar note from September 9th, A. D. 1873, to September 9th, 1875, without the consent or knowledge of these defendants; that said Lucy D. Fake and her husband,
18 Frederick L. Fake, are now wholly insolvent and unable to pay any part of said notes; that since September 9th, A. D. 1874, said premises have depreciated about seventy-five per cent. of the value on that when the five thousand dollars became due. Wherefore these defendants say they have been and are released from all personal liability on said notes.

And these defendants deny all unlawful combination in said bill charged; without this, that any other matter or thing material for them to make answer unto and not herein sufficiently answered, avoided, or denied is true to the knowledge or belief of these defendants.

All of which matters and things these defendants are ready to aver and prove as this court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

ORRIN P. CHASE.
PHILANDER C. HANFORD.

FAIRCHILD & BLACKMAN,
Sol'rs for Defendants.

(Endorsed:) Filed May 28, 1878. Wm. H. Bradley, cl'k.

19 Afterwards, to wit, on the twelfth day of June, 1878, came the complainant, by its solicitor, and filed in said clerk's office its replication to the answer of Philander C. Hanford and Orrin P. Chase in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois.

THE UNION MUTUAL LIFE INSURANCE COMPANY *vs.* PHILANDER C. HANFORD *et al.* } In Chancery.

The replication of the Union Mutual Life Insurance Company, complainant, to the joint answer of Philander C. Hanford and Orrin P. Chase.

This repliant, saving and reserving unto itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that it will aver, maintain, and prove its said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be
20 replied to by this repliant; without this, that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

ROB'T B. KENDALL,
Complainant's Solicitor.

Endorsed: Filed June 12, 1878. W. H. Bradley, cl'k.

21 Afterwards, to wit, on the twenty-seventh day of June, in the adjourned May term of said court, 1878, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

UNION MUTUAL LIFE INSURANCE COMPANY *vs.* PHILANDER C. HANFORD *et al.* } In Chancery.

Upon motion of Robert B. Kendall, solicitor for the complainant, it is ordered that Edwin A. Warfield be, and he is hereby, appointed receiver of the premises and the rents, issues, and profits thereof mentioned and described in the bill of complaint filed herein, to wit: Lots numbered five (5) and six (6), in block numbered three (3), of a subdivision of a part of the northwest fractional quarter of

section twenty-two (22), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian, situate in the city of Chicago, Cook county, Illinois.

And it is further ordered that the said receiver be at liberty to lease said premises, subject to the approval of this court, and out of the rents to be collected by him from said premises to pay all taxes and assessments levied and assessed thereon, and to redeem said premises from any sale for or on account of taxes and assess-
22 ments, and also to make necessary repairs of the buildings situate thereon and keep the same insured against fire.

And the said receiver is hereby directed to pass his accounts from time to time and to pay his balances here into court to the credit of this cause, and liberty is granted to the complainant to apply to this court for such other or further order in the premises as occasion may require.

And it is further ordered that said receiver give his bond, to be approved by this court, in the penal sum of five hundred dollars for the faithful discharge of his duty as such receiver.

Afterwards, to wit, on the twenty-eighth day of June, 1878, came the receiver and filed in said clerk's office his bond in said entitled cause; which said bond is in the words and figures following, to wit:

Receiver's Bond.

Know all men by these presents that we, Edwin A. Warfield, as principal, and James E. Warfield, as surety, both of the city of Chicago, county of Cook, and State of Illinois, are holden and stand firmly bound unto William H. Bradley, clerk of the courts of the United States for the northern district of Illinois, and his successors in office, in the full and just sum of five hundred dollars; which sum, well and truly to be paid to the said clerk or his suc-
23 cessors in office, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this twenty-seventh day of June, A. D. 1878.

The condition of this obligation is such that whereas the said Edwin A. Warfield has this day been appointed by the circuit court of the United States for said northern district a receiver of the property involved in a certain cause now pending in said court in chancery, in which the Union Mutual Life Insurance Company is complainant and Philander C. Hanford and others are defendants:

Now, therefore, if the said Edwin A. Warfield shall faithfully perform his duties as such receiver according to the order of the court made in said cause and such orders as shall hereafter be entered in said cause, then this obligation shall be void; otherwise it shall remain in full force and virtue.

E. A. WARFIELD. [SEAL.]
J. E. WARFIELD. [SEAL.]

Approved.

H. W. BLODGETT, *Judge.*

Endorsed: Filed June 28, 1878. Wm. H. Bradley, cl'k.

24 Afterwards, to wit, on the twenty-seventh day of February, 1879, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

Circuit Court of the United States, Northern District of Illinois.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
PHILANDER C. HANFORD *et al.*
} In Chancery.

In the above-entitled cause it is hereby stipulated and agreed that the evidence taken by Henry W. Bishop, Esquire, master in chancery, prior to this date, in said cause may be used in making his report under an order of reference to be hereafter made by the court referring said cause to him the same as if said order had been entered previous to the taking of testimony by said master.

Feb. 27th, 1879.

ROB'T B. KENDALL,
Solicitor for the Complainant.
FAIRCHILD & BLACKMAN,
Solicitors for the Defendants, Hanford and Chase.

We reserve the right to file exceptions to the master's report after it is filed, for the reason that under the order the master at once reports specially on matters not usually submitted to him, and we have had no opportunity to file exceptions with him.

25 Feb'y 27, 1879.

FAIRCHILD & BLACKMAN,
Sol. for Def'ts.

Endorsed: Filed Feb'y 27, '79. Wm. H. Bradley, cl'k.

On the same day, to wit, on the twenty-seventh day of February 1879, in the December term of said court, 1878, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W., Blodgett, district judge, is the following entry, to wit:

Order.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
PHILANDER C. HANFORD *et al.*
} In Chancery.

Upon motion of the complainant, by its solicitor, it is ordered that this cause be referred to Henry W. Bishop, esquire, the master in chancery of this court, to take proofs and report to this court what amount, if any, is due the complainant, and the master is to be at liberty to report specially upon any matters of fact set forth in the pleadings.

And it is further ordered that this order be entered as of the twenty-fifth day of October, A. D. 1878, and that any testimony taken by the said master after the said date may be used by him in evidence.

26 Afterwards, to wit, on the eighth day of April, 1879, came Henry W. Bishop, master in chancery of said court, and filed in said clerk's office his report in said entitled cause; which said report together with the testimony and exhibits thereto attached are in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Illinois.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
PHILANDER C. HANDFORD, ORRIN P. CHASE, FREDERICK FAKE, LUCY DUNCAN FAKE, WIFE OF THE SAID FREDERICK FAKE.
} 15486. 1178. In Chancery.

Master's Report.

To the honorable the judges of the said court:

The above-entitled cause having been referred to me, as master in chancery of the said court, by an order of the said court heretofore entered herein, I do hereby report that, having given notice to the parties interested that a hearing for the purposes in the said order expressed would be had before me, at my office, No. 33 National Life building, La Salle street, Chicago, on the 28th day of October, A. D. 1878, I was attended on the said last-mentioned day by R. B. Kendall, Esq., of counsel for the complainant, who produced in evidence before me the bill of complaint herein and a mortgage dated the 9th day of September, A. D. 1870, between Orrin P. Chase and Philander C. Handford, party of the first part, and Jacob L.
27 Schureman, husband and trustee of Adaline C. Schureman, party of the second part, a promissory note for five thousand dollars, dated September 9th, 1870, and payable as therein mentioned, and endorsed: "Interest received on this to September 9th, 1871. Interest paid to September 9th, 1872, and the note extended for two years. $20 received to make the interest equal to a semi-annual payment for the next two years. (Signed) L. D. B. 1, '75, rec'd interest in full to 9, 9, '74. Pay to the Union Mutual Life Insurance Company of Maine or order. January 30, '71. (Signed) Jacob L. Schureman."

And another promissory note for six thousand dollars, dated September 9th, 1870, and payable on or before September 9th, A. D. 1873, to the order of Jacob L. Schureman, Esq., with interest at 10 per cent. per annum, and signed by Orrin P. Chase and Philander C. Handford, and endorsed: "Interest received on this to September 9th, 1871. October 7th, 1872, received on account of interest $500. Received interest, $100, being in full to September 9th, 1872. 1, '75, received int. in full to September 9th, 1874. Pay to the Union Mutual Life Insurance Company of Maine or order. January 30th, 1871. (Signed) Jacob L. Schureman"—being the several promissory notes

and the mortgage referred to and described in the bill of complaint herein.

I was also attended on the said 28th day of October, A. D. 1878, by E. A. Warfield, who testified herein on behalf of the said complainant, and whose testimony was duly taken, is hereto annexed, and made a part hereof. I was again attended by adjournment on the 30th day of October, A. D. 1878, and the 21st day of January, A. D. 1879, by said counsel for complainant and by D. Blackman, Esquire, of the firm of Fairchild and Blackman, of counsel for
28 said defendants, Philander C. Handford and Orrin P. Chase, and also by Philander C. Handford, Levi D. Boone, Orrin P. Chase, Fred. L. Fake, Henry J. Goodrich, and William H. Rice, each of whom testified herein, and their testimony was duly taken, is hereto annexed, and made a part hereof.

I further report that from an examination of the said bill of complaint, promissory notes, mortgage, and testimony so as aforesaid produced in evidence before me and from a computation of the amount due I find there is due and owing to the said complainant on the promissory note for five thousand dollars and interest hereinbefore firstly mentioned the sum of five thousand dollars for the principal and eighteen hundred and twenty-seven dollars and 78 cents for interest thereon, at the rate of eight (8) per cent., from the ninth (9th) day of September, A. D. 1874, to the date of this report (making a total of $6,827.78), and that there is also due and owing to the said complainant on the promissory note for six thousand dollars and interest hereinbefore secondly mentioned the sum of six thousand dollars for the principal and twenty-seven hundred and forty-one dollars and 67 cents for interest thereon, at the rate of ten (10) per cent., from the ninth (9th) day of September, A. D. 1874, to the date of this report (making a total of $8,741.67), the entire amount so found to be due and owing to the said complainant as the legal holder and owner of the said promissory notes secured by said mortgage being fifteen thousand five hundred and sixty-nine dollars and 45 cents for the principal and interest thereon to the date of this report. I further report that from an examination as aforesaid I find there has been paid by the said complainant for taxes and assessments and in the purchase of tax certificates for due and un-
29 paid taxes and certificates on the premises included in said mortgage and bill of complaint the total sum of four hundred and fifty-seven dollars and thirty-eight cents ($457.38).

I further report that from an examination of the said testimony so produced in evidence before me as aforesaid I find the said mortgage of the 9th day of September, A. D. 1870, was given to secure the payment of sixteen thousand dollars on three notes—two for five thousand dollars each and one for six thousand dollars—and that one of said notes for five thousand dollars was subsequently paid; that on or about the 30th day of January, A. D. 1871, the two remaining promissory notes were endorsed over to the complainant, as before stated, and the mortgage transferred by the following endorsement thereon: "Chicago, January 30th, 1871. In consideration of one dollar to me in hand paid I do hereby sell, assign, and

set over unto the Union Mutual Life Insurance Company of Maine the within mortgage, with my interest therein, and I authorize the said company to do all things which I might or could do under the said mortgage and to release the same of record when the indebtedness secured thereby is fully paid. Jacob L. Schureman."

That on or about the ninth day of September, A. D. 1872, the said Orrin P. Chase, bachelor; Philander C. Handford, and Emma C. O. Handford, his wife, conveyed by warranty deed to Lucy Duncan Fake the premises mentioned and described in the bill of complaint and mortgage firstly hereinbefore mentioned, and that in said warranty deed to said Lucy Duncan Fake after the covenant of warranty is contained the following: "With the exception of and subject to a certain mortgage or trust deed bearing date September 9th, 1870, made and executed by Orrin P. Chase and Philander C. Handford to Jacob L. Schureman, and upon which there is at the
30 date hereof unpaid the sum of eleven thousand dollars and interest from September 9th, A. D. 1872, which said mortgage or trust deed was assigned to the Union Mutual Life Insurance Company of Boston, Massachusetts, on the 30th day of January, A. D. 1871; which said mortgage or trust deed and the notes to which the same is collateral security, and made and executed by Orrin P. Chase and Philander C. Handford to the order of Jacob L. Schureman, it is hereby expressly agreed shall be assumed and paid by the party of the second part, and when paid are to be delivered, fully cancelled, to the said Orrin P. Chase and Philander C. Handford; which said notes are payable at the Merchants' National Bank of Chicago, Illinois."

And I further report that on the day of the date of the said warranty deed to said Lucy Duncan Fake, to wit, Sept. 9th, 1872, said Levi D. Boone, "ag't," received and gave a receipt for one hundred and fifty dollars, as received from Chase, Handford & Co., for the extension of said note for $5,000, secured by the said first-mentioned mortgage to September 9th, 1874, and that in a statement of account dated January 9th, 1875 (annexed to this report), occurs the following entry: "To extension of $5,000 note from Sept. 9, 1874, to Sept. 9, 1875, $100.

"To extension of $6,000 note from Sept. 9, 1873, to Sept. 9, 1875, $240," and that the value of the premises included in the said mortgage and warranty deed is variously estimated by the witnesses who testified herein on that subject at from fifteen thousand dollars to ten thousand dollars as the present value thereof and at two hundred and fifty dollars to two hundred dollars per front foot, and that its value in September, A. D. 1874, was from eighteen to nineteen thousand dollars and from three hundred to three hundred and twenty-five dollars per front foot.

31 I return all the documents used by me in preparing this report and make the same a part hereof.

All of which is respectfully submitted.

HENRY W. BISHOP,

Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated Chicago, April 4th, 1879.

32 In the Circuit Court of the United States for the Northern District of Illinois.

UNION MUTUAL LIFE INSURANCE COMPANY, Complainant, *vs.* PHILANDER C. HANFORD *et al.*, Defendants. } In Chancery.

Testimony Taken Before Henry W. Bishop, Master in Chancery of said Court, Monday, the 28th Day of October, A. D. 1878.

Present: Robert B. Kendall, Esq., solicitor for the complainant.

EDWIN A. WARFIELD, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. KENDALL, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Edwin A. Warfield; residence, Chicago; of lawful age; financial agent of the Union Mutual Life Insurance Company of Maine.

Q. You have the care of the complainant's loans and investments in Chicago, have you?

A. Yes, sir,

Q. State whether or not you have ever expended any money in behalf of the complainant on account of taxes on the property involved in this suit.

A. I have.

Q. State what amounts and for what taxes, etc.

A. On the 14th day of September, 1877, I paid the sum of three dollars and fourteen cents to redeem certificate No. 693 for the fifth instalment of South park, with eight cents costs, and on the same date the sum of three dollars fourteen cents for certificate

33 693½ for the fifth instalment of South park, with costs of eight cents, making a total of six dollars and forty-four cents for the fifth instalment of South park tax; also, on the 27th day of September, 1877, the sum of one hundred and seventeen dollars and four cents and costs, five dollars and eighty-five cents, for certificate No. 5521 for the State and county tax of 1876, and, on the same day, the amount of ninety-five dollars forty-nine cents, with four dollars seventy-seven cents costs, on certificate 5522 for the State and county tax of 1876.

Q. Since the filing of this bill on the 30th day of March, 1878, have you paid any money on account of taxes?

A. I have.

Q. State the amount and for what taxes.

A. I paid the sum of six dollars and twenty-nine cents for the sixth installment of South park assessment, together with sixteen cents costs; also the sum of two hundred and fifteen dollars and ninety-two cents for the State and county, city, town, school, road, and corporation taxes for 1877, together with five dollars and forty cents costs.

Q. Have you paid any other sums of money on account of taxes

or for any other purpose on account of that loan which you have not stated?

A. No.

Q. To what date has the interest upon the two notes secured by the mortgage in this case been paid?

A. It has been paid to September 9th, 1874.

Q. What was the date of the last payment—that is, the date the last payment was made—what time was the last payment made?

A. It was made on the 9th day of February, 1875. That paid interest to the 9th day of September, 1874.

Q. Has there been anything paid since then on account?

A. No, sir.

E. A. WARFIELD.

34 *Testimony Taken Before Henry W. Bishop, Master in Chancery of said Court, Monday, the 28th Day of October, A. D.* 1878.

Present: Robert B. Kendall, Esq., solicitor for the complainant.

The solicitor for the complainant offered in evidence an indenture of mortgage dated the 9th day of September, A. D. 1870, between Orrin P. Chase and Philander C. Handford, of Chicago, party of the first part, and Jacob L. Schureman, husband and trustee of Adaline C. Schureman, party of the second part, filed for record on the 21st day of October, A. D. 1870, in the recorder's office of Cook county, recorded in Book 154 of Mortgages, page 400, being the mortgage described in the bill of complaint, which is hereto attached and marked Exhibit A:

35 EXHIBIT A.

This indenture, made this ninth day of September, in the year of our Lord one thousand eight hundred and seventy, between Orrin P. Chase and Philander C. Handford of Chicago, Cook county, Illinois, party of the first part, and Jacob L. Schureman, husband and trustee of Adaline C. Schureman, party of the second part, witnesseth:

That whereas the said party of the first part is justly indebted to the said party of the second part in the sum of sixteen thousand dollars, secured to be paid by three certain promissory notes of even date herewith, signed by said Orrin P. Chase and Philander C. Handford, payable to the order of the said party of the second part, one for five thousand dollars, payable in one year from date, and one for five thousand dollars, payable two years after date, both at eight per cent. interest, and the other for six thousand dollars, payable on or before September 9th, A. D. 1873, with interest at ten (10) per cent. per annum, payable at the Merchants' National Bank of Chicago:

Now, therefore, this indenture witnesseth: That the said party of the first part, for the better securing the payment of the money aforesaid, with interest thereon, according to the tenor and effect of the
36 said promissory notes above mentioned, and also in consideration of the further sum of one dollar to them in hand paid by the said party of the second part at the delivery of these presents,

the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns forever, all the following-described lots, pieces, or parcels of land, situate in the county of Cook and State of Illinois, and known and described as follows, to wit:

Lots five (5) and six (6), in block three (3), of a subdivision of a part of the northwest fractional quarter of section twenty-two (22), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian, according to a plat of a subdivision thereof by the executors of Eliza Garrett, deceased, recorded in the office of the recorder of the county of Cook, in the State of Illinois, in Book 125 of Maps, at page 45, together with all right, title, and interest of the said party of the first part in and to the party walls now standing on the north side of said lot five and on the south side of said lot six, and also in and to the land whereon the said walls stand, the said sum of money above specified being for purchase-money of the premises above described:

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging or in anywise appertaining, and also all the estate, interest, and claim whatsoever, in law as well as in equity, which the party of the first part have in and to the premises hereby conveyed unto the said party of the second part, his heirs and assigns, and to their only proper use, benefit, and behoof:

Provided always, and these presents are upon this express
37 condition, that if the said party of the first part, their heirs, executors, or administrators, shall well and truly pay or cause to be paid to the said party of the second part, his heirs, executors, administrators, or assigns, the aforesaid sum of money, with such interest thereon, at the time and in the manner specified in the above-mentioned promissory notes, according to the true intent and meaning thereof, then and in that case these presents and everything herein expressed shall be absolutely null and void; but it is further provided and agreed that if default be made in the payment of either of said promissory notes, either of principal or interest, on the days respectively whereon the same shall become due and payable the whole of said principal and interest secured by the said promissory notes in this mortgage mentioned shall thereupon, at the option of said party of the second part, become immediately due and payable, anything herein or in said promissory notes contained to the contrary notwithstanding, and this mortgage may be immediately foreclosed to pay the same by said party of the second part, his heirs, executors, administrators, or assigns, or the said party of the second part, his heirs, executors, administrators, or assigns, after publishing a notice in a newspaper printed in the said city of Chicago thirty days before the day of such sale, may sell the said premises and all right and equity of redemption of the party of the first part, their heirs and assigns, therein at public auction, at the court-house door in said Chicago, Illinois, to the highest bidder, for cash, at the time mentioned in such notice; and the said party of the first part hereby

specially covenants and agrees to and with said party of the second part to waive his right of equity and redemption, and the said party of the second part to make, execute, and deliver to the pur-
38 chaser or purchasers thereof a deed or deeds for the premises so sold, and out of the proceeds of such sale to pay all costs and expenses incurred in advertising and selling said premises; also the principal and interest due on said promissory notes, and to render the overplus, if any, to said Orrin P. Chase and Philander C. Handford, their heirs or assigns, at the office of said party of the first part, in said Chicago.

And the said party of the first part do hereby covenant and agree with the said party of the second part that at the time of delivery hereof the said party of the first part are the lawful owners of the premises above granted and seized thereof in fee simple absolute; that they will warrant and defend the above-granted premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns forever, and they are free from all incumbrances whatsoever.

And the said Orrin P. Chase and Philander C. Handford, party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise, and especially under the act entitled "An act to exempt homesteads from sale on execution," passed by the General Assembly of the State of Illinois A. D. 1851 and approved February 11, 1851, and an act entitled "An act to amend an act entitled 'An act to exempt homesteads from sale on execution,'" passed by said Assembly A. D. 1857 and approved February 17, A. D. 1857.

In witness whereof the party of the first part hereunto set their hands and seals the day and year first above written.

ORRIN P. CHASE. [SEAL.]
PHILANDER C. HANDFORD. [SEAL.]

Signed, sealed, and delivered in the presence of—

——— ———.

[Sixteen dollars U. S. rev., duly cancelled.]

39 STATE OF ILLINOIS, } ss:
Cook County, City of Chicago, }

I, James J. Noble, a notary public within and for the city of Chicago, in Cook county, in the State aforesaid, do hereby certify that Orrin P. Chase and Philander C. Handford, personally known to me to be the same persons whose names are subscribed to the foregoing mortgage, appeared before me this day and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

[SEAL.] Given under my hand and notarial seal this twentieth day of October, A. D. 1870.

JAMES J. NOBLE,
Notary Public.

(Endorsed.)

CHICAGO, *January 30th*, 1871.

In consideration of one dollar to me in hand paid I do hereby sell, assign, and set over unto the Union Mutual Life Insurance Company of Maine the within mortgage, with my interest therein, and I authorize the said company to do all things which I might or could do under the said mortgage and to release the same of record when the indebtedness secured thereby is fully paid.

JACOB L. SCHUREMAN.

STATE OF ILLINOIS, } ss:
Cook County, }

No. 70350.

This instrument was filed for record on the 21 day of October, A. D. 1870, at the hour of 11 o'clock a. m., and duly recorded in Book 154 of Mort's, at page 440.

NORMAN T. GASSETTE,
Clerk of Circuit Court and ex Officio Recorder.

40 Also a promissory note, dated September 9, 1870, for the sum of five thousand dollars ($5,000), payable two years after date to the order of Jacob L. Schureman, Esq., with interest at 8 per cent. per annum, signed by Orrin P. Chase and Philander C. Handford, upon which note appeared the following endorsements:

"Interest received on this to September 9th, 1871. Interest paid to September 9th, 1872, and the note extended for two years. $20 received to make the interest equal to a semi-annual payment for the next two years. (Signed) L. D. B. 1, '75. Rec'd interest in full to 9, 9, '74. Pay to the Union Mutual Life Insurance Company of Maine or order. January 30, '71. (Signed) Jacob L. Schureman."

Being one of the notes described in said mortgage and bill of complaint, which is hereto annexed and marked "Exhibit B."

EXHIBIT B.

$5,000. CHICAGO, *September 9th*, 1870.

Two years after date, for value received, we promise to pay to the order of Jacob L. Schureman, Esq., five thousand dollars, with interest at eight per cent. per annum, at the Merchants' National Bank of Chicago. Due annually.

No. —. ORRIN P. CHASE.
PHILANDER C. HANDFORD.

This note is secured by mortgage duly stamped.

(Endorsed:) Interest rec'd on this to Sept. 9, '71. Interest paid to Sept. 9, '72, and the note extended for two years. Twenty dollars rec'd to make the interest equal to a semi-annual payment for the next two years. L. D. B. 1, 75. Rec'd interest in full to 9,
41 9, '74. Pay to the Union Mutual Life Insurance Company of Maine or order. Jan'y 30th, 1871. Jacob L. Schureman.

Also another promissory note of the same date as the last for the sum of six thousand dollars ($6,000), payable on or before September 9th, A. D. 1873, to the order of Jacob L. Schureman, Esq., with interest at 10 per cent. per annum, and signed by Orrin P. Chase and Philander C. Handford, upon which note are endorsements as follows:

"Interest received on this to September 9th, 1871. October 7th, 1872. Received on account of interest, $500. Received interest, $100, being in full to September 9th, 1872. 1, '75. Received int. in full to September 9th, 1874. Pay to the Union Mutual Life Insurance Company of Maine or order. January 30, 1871. (Signed) Jacob L. Schureman."

Being the other note described in said mortgage and bill of complaint, which is hereto attached and marked "Exhibit C."

EXHIBIT C.

$6,000. CHICAGO, ILLS., *September 9th*, 1870.

On or before September 9th, A. D. 1873, after date, for value received, we promise to pay to the order of Jacob L. Schureman, Esq., six thousand dollars, with interest at ten per cent. per annum, payable at the Merchants' National Bank, Chicago. Due annually.

No. —. ORRIN P. CHASE.
PHILANDER C. HANDFORD.

This note is secured by mortgage duly stamped according to law.

(Endorsed:) Interest rec'd on this to Sept. 9, '71. Oct., '72. Rec'd on acc. of int., $500. Rec'd interest, $100, being in full to
42 Sept. 9, '72. 1, '75. Rec'd int. in full to Sept. 9, '74. Pay to the Union Mutual Life Insurance Company of Maine or order. Jan'y 30, 1871. Jacob L. Schureman.

Testimony of Philander C. Handford, a Witness on Behalf of the Defendants, Taken Before Henry W. Bishop, Master in Chancery of said Court, Wednesday, the 30th Day of October, A. D. 1878.

Present: Robert B. Kendall, Esq., solicitor for the complainant, and D. Blackman, Esq., solicitor for the defendants.

Examined in chief by Mr. BLACKMAN:

Q. Mr. Handford, are you one of the defendants in the suit of The Union Mutual Life Insurance Company against F. L. Fake and others?

A. Yes, sir.

Q. Were you at any time, in connection with Mr. Chase, ever the owner of the property described in said mortgage?

A. Yes, sir.

Q. Did you at any time sell or dispose of the same—did you or Mr. Chase?

A. We did.

Q. To whom?
A. To Mr. Fake.
Q. Now, will you look at the warranty deed which I offer, dated the 9th day of September, 1872, between yourself and Chase, as grantors, and Lucy Duncan Fake, as grantee, and see whether you recognize that paper (indicating)?
A. Yes, sir; I do.
Q. Who executed that — signed it?
A. Chase and myself.
Q. Will you look at the description of the property described therein and state whether or not it is the same as that mentioned in the mortgage in this case?
A. Yes; I have examined it, and found it the same.
Q. To whom was this mortgage made?
A. The original mortgage?
Q. By you.
A. To Jacob L. Schureman.
43 Q. For what amount—how many notes and what amount was each one?
A. Sixteen thousand dollars.
Q. How many notes?
A. Three notes, two of five thousand dollars each and one of six thousand.
Q. Will you state whether or not the notes referred to in the warranty deed are the identical notes given to Jacob L. Schureman on these lots?
A. Yes, sir; they are the same notes.

Counsel for defendants offers the warranty deed in evidence, marked "Exhibit A."

44 [U. S. revenue stamps to the amount of $25.00 on this deed.]

Warranty Deed.

This indenture, made this ninth day of September, in the year of our Lord one thousand eight hundred and seventy-two, A. D. 1872, between Orrin P. Chase, bachelor; Philander C. Handford and Emma C. O. Handford, his wife, of the city of Chicago, county of Cook and State of Illinois, of the first part, and Lucy Duncan Fake, of the same place aforesaid, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of twenty-five thousand ($25,000) dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said party of the second part, her heirs and assigns, all the following-described lots, pieces, or parcels of land, situated in the city of Chicago, in the county of Cook and State of Illinois:

Lots five (5) and six (6), in block three (3), of a subdivision of a part of the northwest fractional quarter of section twenty-two (22), township thirty-nine (39) north, of range fourteen (14) east, of the

third principal meridian, according to a plat of the subdivision by the executors of Eliza Garrett, deceased, recorded in the office of the recorder of the county of Cook, in the State of Illinois, in Book One Hundred and Twenty-five (125) of Maps, at page forty-five (45), together with all the right, title, and interest of the said parties of the first part in and to the party walls now standing on the north
45 side of said lot 5 and on the south side of lot 6, and also in and to the land whereon the said walls stand, and forever defend, with the exception of and subject to a certain mortgage or trust deed, bearing date September ninth (9), eighteen hundred and seventy, made & executed by Orrin P. Chase & Philander C. Handford to Jacob L. Schureman & upon which there is at the date hereof unpaid the sum of $11,000 *dollars* & interest from September ninth (9), A. D. 1872; which said mortgage or trust deed was assigned to the Union Mutual Life Insurance Company of Boston, Massachusetts, on the thirtieth (30th) day of January, A. D. 1871; which said mortgage or trust deed and the notes — which the same is collateral security are made & executed by Orrin P. Chase and Philander C. Handford to the order of Jacob L. Schureman.

It is hereby expressly agreed — shall be assumed and paid by the party of the second part & when paid are to be delivered fully canceled to the said O. P. Chase & P. C. Handford; which said notes are payable at the Merchants' National Bank of Chicago, Illinois.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, claim, and demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, her heirs and assigns forever; and the said Orrin P. Chase, Philander C. Handford, & Emma C. O. Handford, parties of the first part, hereby expressly waive, release, and re-
46 linquish unto the said party of the second part, her heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said Orrin P. Chase, Philander C. Handford, & Emma C. O. Handford, parties of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, her heirs and assigns, that at the time of the ensealing and delivery of these presents they were well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law and in fee simple, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and en-

cumbrances of what kind or nature soever; and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, her heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ORRIN P. CHASE. [SEAL.]
PHILANDER C. HANDFORD. [SEAL.]
EMMA C. O. HANDFORD. [SEAL.]

Signed, sealed, and delivered in presence of—

——— ———.

The word bachelor, on third line from the top, was inserted and interlined before the signing and ensealing of this deed.

47 STATE OF ILLINOIS, } ss:
Cook County, }

I, James A. Marshall, notary public in and for the said county, in the State aforesaid, do hereby certify that Orrin P. Chase, Philander C. Handford, & Emma C. O. Handford, personally known to me as the same persons whose names are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument in writing as their free and voluntary act for the uses and purposes therein set forth.

And the said Emma C. O. Handford, wife of the said Philander C. Handford, having been by me examined separate and apart and out of the hearing of her husband, & the contents and meaning of the said instrument in writing having been by me fully made known & explained to her, & she also by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands & tenements therein mentioned, & also all her rights and advantages under & by virtue of all laws of this State relating to the exemption of homesteads, without compulsion of her said husband, & that she does not wish to retract the same.

Given under my hand & notarial seal this 18th day of September, A. D. 1872.

[NOTARIAL SEAL.] JAMES A. MARSHALL,
Notary Public.

Entered.

G. W. WHEELER,
County Clerk pro tem.

(Endorsed.)

STATE OF ILLINOIS, } ss:
Cook County, }

No. 57280.

48 I, Norman T. Gassette, clerk of the circuit court and *ex officio* recorder within and for the county and State aforesaid,

do hereby certify that the within and foregoing instrument in writing was filed for record on the 20 day of Sept., A. D. 1872, and duly recorded in volume 192 of Deeds, on page 231.

In testimony whereof I have hereunto set my hand the day and date aforesaid.

NORMAN T. GASSETTE, *Recorder.*

49 Q. Do you know whether or not the provisions of that deed for the payment of those notes were known to Dr. D. L. Boone?

Objected to.

A. I always understood it was.

Q. What relation had Dr. Boone to the Union Mutual Life Insurance Company?

A. He was their agent.

Q. At the time of the sale to Mr. Fake did you see Dr. Boone?

A. No, sir; I did not personally.

Q. Did you at the time of the sale pay yourself Dr. Boone any money?

A. No, sir.

Q. Have you at any time ever assented to the extension of time for the payment of these two notes from Dr. Boone to Mr. Fake?

A. No, sir; it was the greatest surprise when I found there was any such thing done.

Cross-examination by Mr. KENDALL:

Q. Mr. Handford, did you ever tender to the complainant the amount of the payment of these notes or either of them or any part?

A. Well, I think we did at the time we notified him that the property was sold, that they were assumed by another party, and he consented to that change.

Q. I do not think you understand my question. I ask if you ever tendered the money in payment to the Union Mutual Life Insurance Company of these notes?

A. We considered we did; yes, sir; in that way.

Q. When?

A. By notifying him that theproperty was sold and assumed by another party.

Q. Well, you never tendered the money?

A. The money we never tendered to my knowledge; no, sir.

PHILANDER C. HANDFORD.

50 *Testimony Taken Before Henry W. Bishop, Master in Chancery of said Court, Wednesday, the 30 Day of October, A. D. 1878.*

Present: Robert B. Kendall, Esq., solicitor for the complainant, and D. Blackman, Esq., solicitor for the defendants.

LEVI D. BOONE, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. KENDALL, and deposes and says as follows:

Q. Please state whether or not you were the agent for the complainant at the time the mortgage and notes involved in this suit was assigned by Schureman to the complainant.

A. I was.

Q. How long did you continue to be the agent for the complainant after that?

A. I continued to be the agent until about two years ago—the summer of 1876.

Q. On this paper marked Exhibit C please state for what the items $100.00 and $240.00 were paid.

A. Paid for the extension of these two notes—one for one year and one for two.

Q. To whom were these amounts paid?

A. To me.

Q. Were they paid to you in behalf of the complainant or were they paid to you individually?

A. Paid to me individually.

Q. As brokerage?

A. Yes, sir; they never went into the company's accounts at all.

Q. The complainant never received any benefit from that payment, then?

A. No, sir.

Q. What commission do these items represent—what rate?

A. Two per cent. a year, I think.

Q. Were you engaged at that time in doing business as a general loan agent?

A. Yes, sir.

Q. You were in the habit of charging commissions in other cases similar to this for negotiating extensions?

A. Yes, sir.

51 Q. At the time this statement was made up and the payments made in accordance with this statement to what time was the interest upon these notes figured or computed?

A. To the 9th of September, 1874.

Q. Was the interest paid in full up to that date?

A. Yes, sir; I think it was.

Q. Can you tell whether or not any interest has been paid since then?

A. No, sir.

Q. Do you mean you cannot tell?

A. I cannot tell.

Q. Did you have any knowledge of the conveyance of this property by Chase and Handford to Fake and his agreement to assume the payment of those notes, or Mrs. Fake's agreement to assume the notes?

A. When?

Q. At any time—at the time it was done.

A. Yes, sir. I have knowledge of the transfer of the property to Fake or to Mrs. Fake and the transfer of the mortgage to the insurance company. I wrote the transfer myself, I believe.

Q. Was that all done at the same time or about the same time?

A. It was done at the time the mortgage was purchased by me for the company.

Q. When was the mortgage purchased by you or by the company?

A. January 30th, 1871; that is the date of the transfer of the transfer of the mortgage and the notes.

Q. That appears by endorsements on the notes signed by Schureman?

A. Yes, sir.

Q. Is that endorsement in your handwriting?

A. Yes, sir; both the endorsements and the transfer of the mortgage are in my handwriting.

Q. You do not mean that the sale to Fake was contemporaneous with the purchase of the mortgage by the insurance company?

A. No.

Cross-examination by Mr. BLACKMAN:

Q. Doctor Boone, will you look at these two notes and tell me in whose handwriting it is in which these words are written,
52 "1, '75. Received payment in full September 9, '74?"

A. That is written by a clerk in the office at Boston.

Q. What does 1, '75 mean?

A. It means dates, I suppose.

Q. The 1st of January, 1875?

A. Yes, sir; the payments were made at that time, but it was to September 9th, 1874, the payment was not made at the time.

Q. Will you look at the $6,000 note and state how it happens that it took $600 to pay the interest from September 9th, 1871, to September 9th, 1872? Explain the endorsements that you see on it.

A. This is a ten per cent. note.

Q. Did you know of the purchase by Mrs. Fake of these premises?

A. Yes, sir; I do by common reputation. I do not think I ever saw a conveyance or anything of that kind.

Q. Were you ever informed by Mr. Chase or Mr. Handford of the fact?

A. No, sir; not that I am aware of.

Q. Can you give any reason why you should have made arrangements with Mr. Fake if you did not know that he was to pay the interest?

A. Well, I probably knew it from Mr. Fake at his coming to pay the interest.

Q. You were general agent for making loans here in Chicago of the complainant, were you not?

A. Yes, sir; I might be designated as general agent for that purpose.

Q. And you had authority to extend payment of the loans on the terms, had you not?

A. Yes, sir; I did do it, and it was approved. I have no express authority about it, I believe.

Q. Had you, in the year 1872, any acquaintance with Mr. Fred. L. Fake? Did you know him?

A. I do not remember how long I have known Mr. Fake.

Q. Did you know at that time—September, 1872—Mr. Chase or Mr. Handford?

A. Well, I could not say that I did. I should have not known either of the gentlemen to-day if I had not learned that these were the gentlemen.

53 Q. How long have you known Mr. Fake, you think? As near as you can remember.

A. Well, I have known Mr. Fake by his face a good deal longer than I have known his name, so as to have named him in speaking to him. I should say that I have known him for the last four or five years certainly. I know a good many men whose names I do not know. I should not be able to recognize them by name. I have known him since I have had these transactions with him by name.

Q. Did Mr. Fake apply to you for an extension of the time of payment on these two Schureman notes?

A. Yes, sir.

Q. Did you enter into a contract with him to extend it for a consideration of $340.00?

A. I entered into a contract to extend it for a consideration—for the commission expressed in the contract.

Q. In addition to that, did not you require him to pay interest at ten per cent. on back interest on the two notes?

A. Well, I presume I did, sir—that is, that the clerks did. That was the uniform practice of the office—to charge ten per cent. on unpaid interest.

Q. And you had the interest computed on the principal notes for six months only and charged deferred interest on that, did you not?

A. I do not know, sir—that is, I do not know from the statement made out there.

Q. This statement which is marked Exhibit C was made in your office, was it not?

A. Yes, sir.

Q. And was the basis upon which the contract for an extension was made, was it not?

A. It is a statement of the terms upon which the extension would be made.

Q. And you, so far as you acted in the matter, acted as the agent of the complainant in the transaction?

A. I did so far as the transaction was concerned, but not so far as the premium was concerned.

Q. Were you an agent of the company on the 9th of September, 1875?

A. Yes, sir.

54 Q. Did you take any steps to foreclose this mortgage assigned by Schureman to the company?

A. No, sir; I think not.

Q. During the time that you remained agent did you take any steps to foreclose?

A. No, sir.

Q. Did you take any steps to collect either the notes or the interest while you remained agent?

A. What do you mean by "steps?"

Q. Legal steps or other steps.

A. No, sir; no legal proceedings were taken.

Q. Did you take any other proceedings?

A. Well, I sought to collect the interest from Mr. Fake.

Q. Did you seek to collect it from Mrs. Fake?

A. Well, Mrs. Fake was probably notified.

Q. You considered Mr. Fake as the agent of Mrs. Fake, did you not?

A. Yes, sir.

Q. Now, what steps did you take to collect the interest other than legal?

A. Simply notified them of the fact that the interest was due and unpaid, repeatedly.

Q. Why did you not sue Mrs. Fake for the back interest or interest?

A. Well, I can hardly say why I did not sue Mrs. Fake, except that I did not suppose I had any right to sue Mrs. Fake, should not have supposed I had any right to sue Mrs. Fake.

Q. Was not the reason why you took no legal steps to collect the notes that Mrs. Fake was irresponsible at that time?

A. No, sir; no such reason as that.

Q. Well, now, give some reason, if you can, why you did not, when the notes became due, either collect the notes or foreclose the mortgage?

A. Well, I had no other reason other than that we had a great many mortgages that were in the same condition, and the company were not disposed to press their collections with such vigor as would be indicated by an immediate suit.

Q. If I understand you, the reason, then, was the unwillingness of the company to force matters?

A. The leniency of the company, I suppose, or my leniency.

55 Q. Did you at that time consider the property good for the amount of the debt?

A. At what time?

Q. When the notes became due, September 9th, 1875.

A. Well, I do not remember that I had any impression about it. I considered it good at the time I bought the mortgages.

Q. What is the present value of the property?

A. I do not know, sir.

Q. Did not you consider the property worth the amount of the notes when they came due?

A. I say I do not remember having any impression about that.

Q. Do you know why, excepting the supposition of general leniency on the part of the company, that they were not foreclosed?

A. No, sir.

Q. Do you remember whether you notified the company of the condition of this loan about the time the notes became due?

A. I made no special notification to the company; the papers were in the hands of the company at the time in Boston.

Q. Then it was your practice to forward the securities to Boston?

A. Yes, sir.

Q. Was it your practice to collect the interest yourself or was it collected at Boston?

A. Collected here and forwarded to Boston with an account and entered up on the notes there.

Q. Were Chase, Handford & Company doing business in this city at the time these notes became due?

A. I remember the name as a firm; that is all I know about it.

Q. Did you demand or notify them of the non-payment by Fake?

A. I have no recollection of doing so.

LEVI D. BOONE.

56 *Testimony Taken Before Henry W. Bishop, Master in Chancery of this Court, Wednesday, the 30th Day of October, A. D.* 1878.

Present: Robert B. Kendall, Esq., solicitor for the complainant, and D. Blackman, Esq., solicitor for the defendants.

ORRIN P. CHASE, a witness on behalf of the defendants, being first duly sworn, was examined in chief by Mr. BLACKMAN, and deposes and says as follows:

Q. Mr. Chase, are you one of the defendants?

A. Yes, sir.

Q. And one of the grantors mentioned in the deed which I have offered here?

A. Yes, sir.

Q. Do you know what relation Doctor Boone held at that time to the Mutual Life Insurance Company?

A. He was their financial agent.

Q. At the date of that deed, September 9, 1872, did you see Doctor Boone or have any conversation with him or about that time?

A. About that time I did.

Q. Where was it?

A. In his office.

Q. Where was that office?

A. I think it was in his building up here on La Salle street.

Q. Well, what took place there between you and him in relation to this indebtedness of Jacob L. Schureman on this lot, if anything?

A. Well, I called upon Doctor Boone with Mr. Fake.

Mr. FAKE:

—. When?

A. At the time we deeded this to you.

Mr. BLACKMAN:

Q. Go on and tell what occurred.

A. About that time—I do not remember the date—at the time it was closed, or a day or two afterwards, I know I called with Mr. Fake on Doctor Boone.

Q. Did you have any conversation with him about the payment of this debt?

A. Yes, sir; I had said to Doctor Boone that we had sold the property to Mr. Fake.

Q. Was anything said about who was to pay the interest of the debt?

57 A. Yes, sir; that he was to pay the mortgage. Doctor Boone said all right, or something of that sort.

Q. Was there any money paid to him at that time, to your knowledge, or at any time about then to get an extension of time upon the notes?

A. There was $150.00 paid.

Q. For what purpose?

A. September 9th; to extend one note that was due to September 9th, 1874.

Counsel for the defendant offers in evidence the receipt and contract to extend the time, marked Exhibit B.

EXHIBIT B.

Union Mutual Life Insurance Company. L. D. Boone, financial agent, room 13, Boone block, 131 and 133 La Salle street.

$150.00. CHICAGO, *Sept. 9th*, 1872.

Rec'd from Chase, Handford & Co. one hundred and fifty dollars ($150) for the extension of a note of $5,000 secured by trust deed or mortgage dated Sept. 9th, 1870, payable to the order of Jacob L. Schureman, and endorsed by him to the Union Mutual Life Ins. Co. Said note is hereby extended to Sept. 9th, 1874.

L. D. BOONE, *Agent.*

[5 cts. U. S. rev. stamp, duly cancelled.]

Q. What was the name of the purchaser of the estate's husband? What was the name of Lucy Duncan Fake's husband?

A. Fred. L. Fake.

Q. Did you afterwards have any conversation with Doctor Boone

about extending the time of payment? Do you know anything about the extension of time of payment?

A. No.

Q. Do you know anything of your own knowledge about Doctor Boone as agent of the company extending the time for Mrs. Fake?

A. No, sir—that is, I know now that it was done, but I did not know it at the time.

Q. Have you had any conversation with Doctor Boone
58 about it yourself?

A. No; not that I know of. I do not remember.

Cross-examination by Mr. KENDALL:

Q. Mr. Chase, you state that you know now that some arrangement was made with Doctor Boone about extending the time of the payment of these notes the second time?

A. I see by the papers that it was extended.

Q. Is that the only way you know?

A. No. I have known since this suit first came up—after it came up.

Q. How did you know?

A. Mr. Handford came and told me what had been done.

Q. What did Mr. Handford tell you?

A. Well he said that Mr. Fake had only paid a certain amount and had been extending the notes without our knowledge.

Q. That — the only knowledge, then—positive knowledge—that you have in regard to the extension?

A. Yes, sir. I did not know anything about the extension at the time.

Q. You only know about it from what Mr. Handford told you and from what you see on the papers offered in evidence here?

A. Well, Mr. Fake also told me about it since the thing came up—since the suit came up.

Q. Since the commencement of this suit?

A. Yes, sir.

Mr. FAKE: What was that about?

A. In regard to the extension of the payments. We didn't know anything about what you had done with Doctor Boone at all.

Redirect examination by Mr. BLACKMAN:

Q. Did you at any time ever assent to this extension of time to Doctor Boone?

A. No, sir; I did not. We never did know anything about it.

ORRIN P. CHASE.

59 *Testimony Taken Before Henry W. Bishop, Master, &c., on Wednesday, the 30th Day of October, A. D.* 1878.

Present: Robert B. Kendall, solicitor for complainant, and D. Blackman, solicitor for defendants.

FRED. L. FAKE, a witness on behalf of the defendants, being first duly sworn, was examined in chief by Mr. BLACKMAN, and deposes and says as follows:

Q. Are you one of the defendants in this case?
A. No, sir.
Q. Have you been served with subpœna?
A. Yes, sir.
Q. What do you mean by saying you are not a defendant?
A. I did not assume to pay these notes.
Q. Do you know who paid to Dr. Boone the hundred and fifty dollars mentioned in the receipt of September 9th, 1872?
A. No, sir.
Q. Did you ever act, in respect to this property, as the agent of your wife?
A. Yes, sir.
Q. Did you ever pay any money to Dr. Boone when he was the agent of the Union Mutual Life Insuance Company on her account?
A. Yes, sir.
Q. Can you state for what purpose you paid it?
A. I paid it for interest and extensions.
Q. Will you look at that paper dated the 9th of January, 1875, and state what it refers to (indicating)?
A. It refers, I suppose, to just what it states.
Q. What does it state it refers to?
A. It states to certain payments that I made or certain interest that were due and certain payments that I made. That paper came to me.
Q. Who made that paper—the one shown you?
A. Sam. Boone made it; a son of Dr. Boone.
Q. What relation had Sam. Boone to the Dr. Boone in this business?
A. He was a clerk in the office there.
Q. At whose request did he make up this statement?
A. At my request.
Q. For what purpose?
A. I wanted to see how much they claimed was due?
Q. At that date?
60 A. Yes, sir.
Q. Were you at that time dealing with Dr. Boone to procure an extension of time for the payment on the notes?
A. I do not remember. I may have been.
Q. Were the notes spoken of in this paper—the Jacob L. Schureman notes—made by Chase and Handford?

A. Yes, sir; I suppose so.

Q. Did you have any conversation about this time—January 9th, 1875—or previous to it about getting an extension of time on the notes?

A. I think I did. I am sure I did.

Q. Will you look at the item of a hundred dollars on this paper and the item of two hundred and forty dollars on this paper and say what these two sums were for?

A. They were paid for the extension of the notes.

Q. Not paid as interest, but for extension?

A. No, sir; for extension of the notes; and here are the checks that I paid them with.

Counsel for the defendants offers the paper in evidence, marked Exhibit "C:"

EXHIBIT C.

Union Mutual Life Insurance Company; L. D. Boone, financial agent, room 13 Boone block, 131 & 133 La Salle St.

CHICAGO, *Jan'y 9th*, 1875.

623, Chase-Handford, am't	$11,000		balance.
Int. due on 5,000 at 8% & 6,000 at 10%, Mar. 9, '73	500		
Def'r'd int. on same to date	91	67	
Int. due Sept. 9, '73	500		
Def'r'd int. on same to date	66	67	
Int. due March 9, '74	500		
Def'r'd int. on same to date	41	67	
61 Int. due Sept. 9, '74	500		
Def'r'd int. on same to date	16	67	
	$2,216	68	
To extension of $5,000 note from Sept. 9, 1874, to Sept. 9, 1875	100		
To extension of $6,000 note from Sept. 9, 1873, to Sept. 9, 1875	240		
	$2,556	68	
By checks January 9th, '75	1,500		
	$1,056	68	
By checks January 22, '75	500		
	$556	68	

F. L. Fake, Esq.:

The above is the condition of loan 623 to date, provided you wish the notes extended to Sept. 9, '75.

Resp'tf'y,

L. D. BOONE, *Ag't.*
S. S. B.

Q. Have you the checks with you which paid that sum of three hundred and forty dollars and interest?

A. Yes, sir; they are here—two hundred and fifty-six dollars sixty-eight cents and three hundred dollars.

Q. These two checks paid the three hundred and forty dollars and a small balance?

A. They paid that balance there (indicating); that pays the balance of five hundred fifty-six dollars sixty-eight cents.

Counsel for defendants offers in evidence two checks, marked Exhibits D and E:

EXHIBIT D.

No. 1767. CHICAGO, *February* 9, 1875.

Third National Bank of Chicago pay to L. D. Boone or
62 order two hundred & fifty-six .68 dollars.

$256.68. FRED. L. FAKE.

Endorsed: L. D. Boone, p'r Samuel S. Boone. Nat'l Bank of Ills., 1875. Paid. Third Nat'l Bank, Chicago. Paid Feb. 12, 1875.

EXHIBIT E.

No. 1768. CHICAGO, *February* 9, 1875.

Third National Bank of Chicago pay to L. D. Boone or order three hundred dollars.

$300. FRED. L. FAKE.

(Endorsed:) L. D. Boone, Samuel S. Boone. Third Nat'l Bank, Chicago. Paid Feb. 27, 1875.

Q. In addition to the five hundred fifty-six dollars sixty-eight cents did you pay him on the 9th of January any money?

A. I suppose I did. There is fifteen hundred dollars.

Q. Have you a receipt for it?

A. Yes, sir.

Q. What loan does "623" refer to?

A. I suppose that refers to the number on their book; I do not know.

Q. Being a loan or a debt of Chase, Handford & Co. to Jacob L. Schureman?

A. I suppose so; it reads that way.

Q. To what date was the loan extended by this payment?

A. Of the three hundred and forty dollars?

Q. Yes, sir.

A. It says on the back of that receipt there, whatever it is.

Q. It was September 9th, 1875, was it not?

A. I suppose so; that reads so. I suppose that is the time.

Counsel for the defendants offers in evidence a receipt dated February 9th, 1875, for two thousand dollars, marked "Exhibit
63 F;" also a receipt for fifteen hundred dollars, dated January 9th, 1875, marked "Exhibit G:"

EXHIBIT F.

$2,000. CHICAGO, *Feb'y 9th*, 1875.

Received of Fred. L. Fake two thousand dollars, being for semi-annual interest to Sep. 9th, 1874, on loan No. 623 of bal. 11,000, made by Chase & Handford Sept. 9th, 1870; also $216.68 deferred interest on said semi-annual payment.

UNION MUTUAL LIFE INS. CO. OF MAINE,
Per L. D. BOONE, *Ag't.*
S. S. B.

N. B.—This receipt embraces all money paid on this loan from Jan'y 8th to Feb'y 10th, 1875.

BOONE.

(Endorsed:) Feb'y 9th, 1875. In consideration of three hundred and forty (340) dollars this loan 623 is hereby extended to Sept. 9th, 1875. L. D. Boone, ag't, S. S. B. L. D. Boone. Int. on m't'ge 11,000 on 420 Mich. Ave., $2,000. Paid Feb'y 9, 1875.

EXHIBIT G.

CHICAGO, *Jan'y 9th*, 1875.

Received of F. L. Fake to apply on loan 623, made by Chase & Handford Sep. 9, '70, fifteen hundred $\frac{00}{100}$ dollars, money to be applied on said loan subsequent to Sep. 9th, 1872.

$1,500. L. D. BOONE, *Ag't.*
S. S. B.

Cross-examination by Mr. KENDALL:

Q. Mr. Fake, can you tell to what time the interest has been paid on these two notes?

A. I cannot.

Q. Can you by referring to these papers?

A. No, I cannot; I had a book lost that had all these memoranda in, and I cannot tell you of my own knowledge. I do not remember what the last payments were.

64

Q. Has there been any settlement between you and the insurance company since the settlement stated on this paper (indicating)?

A. I do not remember.

Q. Do you know of any?

A. I do not remember, I say. I lost the book that had all these memoranda in, and I am wholly at sea in regard to it; at least I have not lost it, but it is misplaced and I cannot find it.

Q. You stated, I think, that the three hundred and forty dollars was paid for an extension?

A. Yes, sir.

Q. Was that paid to Dr. Boone as a brokerage? Did you understand that that was paid to Dr. Boone personally as a broker's commission?

A. It was paid to him individually as agent. I paid it to him simply as an extension of the loan.

Q. Did you understand that you were paying that to the insurance company or to Dr. Boone, a loan agent?

A. I could not tell you about that, for I never asked the question.

Q. I am simply inquiring as to your understanding of it at the time?

A. I was dealing with Dr. Boone all the way through; whether as agent of the insurance company or as an individual I never asked the question. He said it would be extended for so much money, and I paid it.

Redirect examination by Mr. BLACKMAN:

Q. What interest did you pay upon the deferred or back interest—what rate per cent. did you pay upon the back interest?

A. I paid that statement, whatever it is (indicating).

Q. Ten per cent.?

A. Yes, sir.

Q. Had Mrs. Fake any other property on the 9th of January, 1874, than this house and lot?

A. None that I remember.

FREDERICK L. FAKE.

65 *Testimony Taken Before Henry W. Bishop, Master in Chancery of said Court, Tuesday, the 21st Day of January, A. D. 1879.*

Present: Robert B. Kendall, Esq., solicitor for the complainant; D. Blackman, Esq., solicitor for the defendants.

HENRY J. GOODRICH, a witness on behalf of the defendants, being first duly sworn, was examined in chief by Mr. BLACKMAN and deposes and says as follows:

Int. Please state your name, age, residence, and occupation.

Ans. Henry J. Goodrich; a resident of the city of Chicago; of lawful age.

Q. How long have you resided in Chicago?

A. Since 1865.

Q. What is your occupation?

A. I am a real-estate dealer and broker.

Q. How long have you been engaged in that?

A. Since July 10th, 1865.

Q. Do you know the premises number 420 Michigan avenue, in this city, lately occupied by Fred. L. Fake and wife?

A. I do.

Q. Have you had any dealings in real estate in the immediate vicinity of that place?

A. Yes, sir.

Q. Will you state whether you know of the value of real estate at present in 420 Michigan avenue, in this city?

A. Yes, sir.

Q. What do you appraise the value of these two lots and the buildings on them, being number 420?

A. Fifteen thousand dollars would be a full estimate with the buildings and improvements, and the lots 50 feet, I presume. I will qualify that by saying two hundred and fifty dollars a foot.

Q. Have you known of sales of property since 1874 in the vicinity of that place?

A. I have, on Wabash avenue.

Q. Did you know of any sales about 1873 or 1874, in the vicinity of this property, of real estate?

A. I do not just call to recollection, although the adjacent property I had for sale.

Q. When was that sold—when did you sell that?

66 A. Well, that was not sold. I was trying to sell it. It used to belong to my partner, Mr. Warren. That was not sold. The property has been foreclosed. He went into bankruptcy.

Q. What is your estimate of the value of that property in September, 1874?

A. Well, from eighteen to nineteen thousand dollars.

Q. Can you state if you know what the tendency of property has been, whether upward or downward, in the vicinity of 420 Michigan avenue?

A. Well, there have not been many sales of property in that vicinity, and there has not been any advance. There has been, in other words, rather a decline in prices, but I would say that in fact has been over the whole city.

Q. Upon what system of valuation were loans made in 1872—what ratio of value of property to the loan?

A. I do not know as there was any regular established price or grade of that. The companies' parties who have entrusted business to me on real good property that was rented well or people that resided in the property, 60 per cent. was as high as they wished to go.

Cross-examination by Mr. KENDALL:

Q. Do you know the defendants in this suit, P. C. Handford and others?

A. No; I know Mr. Fred. Fake; that is the only one that I do know.

Q. You stated at first that fifteen thousand dollars would be the full value of that property.

A. Yes, sir.

Q. Afterwards you stated two hundred and fifty dollars a foot.

A. Yes, sir.

Q. Do you mean that the two hundred and fifty dollars a foot is the value of the land exclusive of the buildings?

A. I mean this—that the property, the land, was worth about twelve thousand five hundred dollars. The way I should value the ground and improvements, I should put it at two thousand

67 five hundred dollars as they stand on the land now. They, of course, cost more.

Q. What was the probable cost of these buildings?
A. I do not know when they were put up.
Q. What sort of buildings are on the property at present?
A. It is a two story. I do not know that I ever was in the house, but it is a two-story frame dwelling, and there is a barn in the rear south. It is a neat-looking house. I should judge it was twenty or twenty-two feet front.
Q. Do you think such buildings could be built now for two thousand five hundred dollars?
A. I think they could; yes, sir.
Q. The whole thing?
A. I think they could. I sold three houses just north of there, but I do not remember now what I got for those. That was in the Busby block.

HENRY J. GOODRICH.

68 *Testimony Taken Before Henry W. Bishop, Master in Chancery of said Court, Tuesday, the 21st Day of January, A. D. 1879.*

Present: Robert B. Kendall, Esq., solicitor for the complainant; D. Blackman, Esq., solicitor for the defendants.

WILLIAM H. RICE, a witness on behalf of the defendants, being first duly sworn, was examined in chief by Mr. BLACKMAN, and deposes and says as follows:

Int. 1. Please state your name, age, residence and occupation.
Ans. My name is William H. Rice; I live at 28 Aldine square, Chicago.
Q. How long have you lived in Chicago?
A. It lacks about ten days of having been twenty-six years.
Q. What has been your occupation lately?
A. My occupation for the larger portion of that time has been real estate.
Q. Have you had an office in this city? If so, what?
A. Yes, sir; I have had offices in several places.
Q. I mean civil offices. I want to know if you were assessor for the last year.
A. Yes, sir.
Q. You were such assessor for the south town last year?
A. Yes, sir.
Q. Do you know the premises lately occupied by Fred. L. Fake and family, number 420 Michigan avenue?
A. I suppose I know the one you refer to, but I do not now remember the number. It is about that number, at any rate.
Q. You know the property Fred. Fake used to occupy?
A. Yes, sir.
Q. Will you state what its present value is?
A. I suppose its value is governed by what the thing will bring.
Q. Yes; there are two lots, 5 and 6.
A. Well, I should not consider it worth over ten thousand dollars

at the present time. I do not think it would sell for any more than that, and I do not know as it would for that.

Q. What was its value in September, 1874?

69 A. If you ask me what its value was in 1873 I could tell you better.

Q. Well, 1873; tell me that.

A. It would have sold then for four hundred dollars a foot, I think.

Q. Buildings and all included?

A. Yes, sir; the buildings I do not consider amount to much for that location. It is a two-story frame house, such as a man would not put in that place at the present time. It is worth less there than it would be in some other place—the improvements.

Cross-examination by Mr. KENDALL:

Q. You base your estimate of the value of this property upon what it will sell for at the present time, I understand?

A. Yes, sir; I do not know of any other way.

Q. That means for cash, I suppose?

A. Yes, sir.

Q. Is that the basis upon which you are in the habit of fixing the values of property in case you were called upon to make an appraisal of anything?

A. Ordinarily it would be. For the last two or three years it has been very difficult to place a value for that. That is the way I place it, because there has hardly been any sales, anyhow, to amount to anything, except in business property.

Q. Do you know of any sales having been made in that immediate vicinity in the last year or two?

A. I do not recollect of any now.

Q. Is it not the fact that there really is no market or any sale for such property at the present time at any reasonable price?

A. That depends a great deal upon how a man feels about a reasonable price. I am one of the men that has a good deal of faith in Chicago real estate, and it is worth more to hold than it is to sell, in my estimation; but I think if you were to undertake to

70 sell that property now two hundred dollars a foot would be all it would bring.

Q. At a forced sale?

A. Yes, sir.

Q. Do you think it would have brought four hundred dollars a foot at a forced sale in 1873?

A. Well, I do not mean at a forced sale any more than give a man a month's time, and put it in my hands to sell and give me a month to sell it in at the present time, and I do not believe I could get over two hundred dollars a foot for it, if I could get that. I think in the summer of 1873 it would have sold for four hundred dollars a foot. My judgment is that you cannot sell residence property to-day—the average of residence property—for over fifty cents—a dollar of what it would have brought in 1873. This place has a

house adjoining it on the south that leads me now to recollect the number. That is 424; this is number 420, because there is a lot between — and that house. There was sixteen thousand dollars offered for that house and lot. I cannot tell the year, but, anyway, it was farther back than 1873. Sixteen thousand dollars was offered for it. It is a two story and basement brick house, with a twenty-five-foot lot.

Q. Was 1873 the time of the highest of property here?

A. Well, I do not think that property was probably any higher in 1873 than it was in 1872. It was about the same up to the time of the panic, at any rate. I think there was more property sold in 1872 than in 1873 at about the same figures that it would have brought in 1873.

Q. Well, from 1873 to 1874 was there considerable of a depreciation in the value of property?

A. Well, there was a depreciation, of course. The panic made people panicky in everything.

Q. About what percentage?

71 A. Well, that would be difficult for me to say. I should think property in 1874 would sell within 25 per cent. of 1873; perhaps within 20.

Q. Do you think there was a depreciation of from 20 to 25 per cent. between 1873 and 1874?

A. I should think there was a general depreciation to the amount of 20 per cent., at any rate.

Q. What do you think that property could have been sold for in the manner that you speak of—that is, thirty days' time—in 1874, say in the fall—September, 1874?

A. Well, I should say it could have been sold for probably three hundred to three hundred and twenty-five dollars. It would have been harder to sell it then than it would be to sell it in 1873, because there were less purchasers—a less number of purchasers. I do not know that I had any dealings in that class in that vicinity of any property in 1874 or 1875, but I know generally the prices.

Q. Do you know what that was assessed for last year?

A. I do not recollect.

WILLIAM H. RICE.

Subscribed and sworn to before me this 21st January, 1879.

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

(Endorsed:) Filed April 8, 1879. Wm. H. Bradley, clerk.

72 On the same day, to wit, on the eighth day of April, in the adjourned March term of said court, 1879, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE UNION MUTUAL LIFE INSURANCE COMPANY
vs.
PHILANDER C. HANFORD *et al.* } In Chancery.

On motion of complainant's solicitor, it is ordered by the court that the report of Henry W. Bishop, Esq., the master in chancery of this court, this day filed herein be confirmed unless cause be shown to the contrary within thirty days.

73 Afterwards, to wit, on the tenth day of May, in the adjourned May term of said court, 1879, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Decree.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
PHILANDER C. HANFORD, ORRIN P. CHASE, Frederick Fake, and Lucy Duncan Fake, Wife of the said Frederick Fake. } In Chancery.

This cause having this day been brought on to be heard upon the bill of complaint filed herein, taken as confessed by the defendants, Frederick Fake and Lucy Duncan Fake, and upon the joint answer of the said defendants, Philander C. Hanford and Orrin P. Chase, and the replication to said answer and upon the report of Henry W. Bishop, master in chancery of this court, which report bears date the fourth day of April, A. D. 1879, and was made in pursuance of an order of this court heretofore made in this cause referring it to the said master to take the proofs in said cause, and to compute the amount due to the complainant upon the promissory notes and the mortgage and the covenants therein contained, mentioned, and set forth in said bill of complaint, and which report was filed herein on the eighth day of April, A. D. 1879—

74 On reading said report, upon motion of counsel for the complainant, no cause to the contrary having been shown, it is ordered, adjudged, and decreed, and this court, by virtue of the authority in it vested, doth order, adjudge, and decree, that the said report and all things therein contained do stand ratified and confirmed.

And this court, being fully advised in the premises, doth find, adjudge, and decree that all the material allegations in the said bill of complaint contained have been fully proved, and that there is at the date of the entry of this decree due to the complainant in this cause from the said defendants, Hanford and Chase and Lucy Duncan Fake, the sum of fifteen thousand eight hundred and eighty-one dollars and sixty-seven cents, and that the complainant has a valid and first lien therefor upon the lands and premises herein-

after described, and that the rights and interests of the defendants in this cause in said lands are subject and inferior to the lien of said complainant.

It is therefore, upon motion of counsel for the complainant, ordered, adjudged, and decreed, and this court, by virtue of the power and authority in it vested, doth order, adjudge, and decree, that the said defendants, Philander C. Hanford, Orrin P. Chase, or some of the other defendants in this cause pay or cause to be paid to the complainant within ten days from the date of the entry
75 of this decree the said sum of fifteen thousand eight hundred and eighty-one dollars and sixty-seven cents, with interest thereon, at the rate of six per centum per annum, from the date of the entry of this decree to the day of such payment, and also pay into court the costs in this cause, to be taxed, and in default of so doing that all and singular the said premises mentioned and described in the said bill of complaint and hereinafter described, or so much thereof as may be sufficient to satisfy the amount due to the complainant, as hereinbefore adjudged, together with interest and the costs in this case, and which may be sold separately without material injury to the parties interested, be sold at public auction, to the highest bidder for cash, by Henry W. Bishop, master in chancery of this court.

And it is further ordered that he make such sale at the west door of the building in which this court is held, to wit, the building known as the National Life building, numbered 157 to 163 La Salle street, in the city of Chicago, in Cook county, Illinois, and that he give public notice of the time and place of holding such sale by publishing an advertisement thereof once a week for three successive weeks in a newspaper published in the city of Chicago, in the county of Cook and State of Illinois, the first publication of such notice being not less than twenty days previous to the time of such sale; that at such sale the complainant or any of the parties to this cause may be the purchaser or purchasers; that the said
76 master shall give to any purchaser at such sale a certificate of sale, in pursuance of the law of the State of Illinois concerning the sale of real estate by virtue of a decree of foreclosure of mortgage, and shall cause a duplicate of such certificate to be recorded, as required by law.

The premises authorized to be sold under and by virtue of this decree are the following, to wit: All the certain lots, pieces, or parcels of land situate, lying, and being in the city of Chicago, in the county of Cook and State of Illinois, known and described as lots five (5) and six (6), in block three (3) of a subdivision of a part of the northwest fractional quarter of section twenty-two (22), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian, together with all the right, title, and interest of the said defendants in and to the party walls now standing on the north side of said lot five (5) and on the south side of said lot six (6) and the land whereon said walls stand, said lots being the same shown on a plat of a subdivision by the executors of the will of Eliza Garrett, deceased, which was recorded in the office of the recorder for the said county of Cook in Book 125 of Maps, page 45, together with all

and singular the tenements, hereditaments, and appurtenances thereunto belonging.

It is further ordered that if the said premises or any parcel thereof shall at such sale be struck off and sold by the master to the
77 complainant in this cause, the complainant shall be required to pay to the master only so much of the complainant's bid as shall, taken together with other moneys paid to the master at such sale on bids for parcels by other persons, if any there be, be sufficient to satisfy the expenses of the sale and the master's fees, disbursements, and expenses and the costs of this suit, and also any excess of the remainder of the amount of said bid after such payment over the amount due the complainant under this decree for indebtedness secured by said mortgage.

It is further ordered that said master make report to this court of such sale and of his acts and doings hereunder for approval and confirmation and for further direction herein, and that he retain from the moneys received by him on said sale the amount of his fees, disbursements, and commissions thereon and bring the residue of such moneys, if any, into court to abide the further order of the court, and that he take the receipt of the clerk of this court therefor and file the same with said report, and if the price for which said premises shall be so sold shall be insufficient to satisfy the amount so found and adjudged to be due to the complainant, with the interest thereon and the costs of suit and expenses of sale as aforesaid, that the said master specify the amount of such deficiency in his said report of sale.

And it is further ordered that the clerk of this court hold
78 such moneys so to be paid him by said master subject to the further order and direction of this court in this cause.

It is further ordered that if any sale made by said master under this decree shall be confirmed by this court and if the land so sold shall not be redeemed according to the laws of the State of Illinois the master in chancery of this court shall, after the expiration of the time allowed by law for such redemption, execute and deliver to the legal holder of any certificate of sale issued under this decree a deed of conveyance of the land in such certificate described which shall not have been so redeemed.

And it is further ordered, adjudged, and decreed that the defendants in this cause and all persons claiming by, through, or under them or either of them since the filing of the original bill of complaint in this cause be forever barred and foreclosed from all equity of redemption and claim of, in, and to said above-described land and premises and any part or parcel thereof which shall be sold as aforesaid under this decree and which shall not be redeemed according to law.

And it is further ordered, adjudged, and decreed that upon the execution and delivery of the deed or deeds of conveyance as aforesaid the grantee or grantees, his or their heirs or assigns, be let into possession of the portion of said mortgaged premises so con-
79 veyed to him or them, and that any of the parties in this cause who may be in possession of said premises or any part thereof

and any person who, since the commencement of this suit, has come into possession under them or either of them, on the production of said master's deed of conveyance and of a certified copy of the order of this court confirming the report of said sale, surrender possession thereof to such grantee or grantees, his or their heirs or assigns.

Afterwards, to wit, on the first day of July, 1879, came Henry W. Bishop, master in chancery of said court, and filed in said clerk's office his report of sale in said entitled cause; which said report of sale is in the words and figures following, to wit:

80 In the Circuit Court of the United States for the Northern District of Illinois.

UNION MUTUAL LIFE INSURANCE COMPANY, Complainant,
vs.
PHILANDER C. HANFORD, ORRIN P. CHASE, Frederick Fake, and Lucy Duncan Fake, Wife of the said Frederick Fake, Defendants. } In Chancery.

Master's Report of Sale.

To the honorable the judges of said court:

The undersigned, Henry W. Bishop, as master in chancery of said court, respectfully reports that in pursuance of a decree of the said court entered in the above-entitled cause on the tenth (10th) day of May, A. D. 1879 (one thousand eight hundred and seventy-nine), wherein it was, among other things, ordered that in default of payment within ten days from the date of the entry of said decree by said defendants, Philander C. Hanford, Orrin P. Chase, or some of them, to the said complainant — the sum of fifteen thousand eight hundred and eighty-one dollars and sixty-seven cents, with interest thereon at the rate of six per centum per annum from the date of the entry of the said decree to the day of such payment, and the costs in this cause taxed, all and singular the premises men-
81 tioned and described in the bill of complaint in this cause or so much thereof as might be sufficient to satisfy the amount due to the complainant, as thereinbefore adjudged, together with the interest and the costs in this case, and which might be sold separately without material injury to the parties interested, be sold at public auction by Henry W. Bishop, the master in chancery of this court, at the west door of the building in which this court is held, to wit, the building known as the National Life building, numbered 157 to 163 La Salle street, in the city of Chicago, Cook county, Illinois, in the manner and upon the terms and notice in said decree mentioned, the said defendants having made default in payment of the moneys in said decree mentioned within said period of ten days, and the same remaining wholly unpaid, the undersigned, in accordance with said decree of the said court, as such master in chancery advertised the said premises and property for sale at public auction to the

highest bidder, for cash in hand, in the Chicago Legal News, a weekly secular newspaper of general circulation, printed and published in the city of Chicago, county of Cook and State of Illinois, the date of the first paper containing the said advertisement
82 being the thirty-first (31st) day of May, A. D. 1879, and the date of the last paper containing the same being the twenty-first day of June, A. D. 1879, the said advertisement having been published in said newspaper for four successive weeks, to wit, four times prior to the day of sale named therein, and as appears by a certified copy of the said advertisement and a certificate of publication thereof, hereto attached and made a part hereof.

That at the hour, day, and place fixed and mentioned in the said advertisement, to wit, at the hour of twelve (12) noon of the twenty-fifth (25th) day of June, A. D. 1879 (one thousand eight hundred and seventy-nine), at the west door of the building in which this court is held, to wit, the building known as the National Life building, numbered 157 to 163 La Salle street, in the city of Chicago, in Cook county, Illinois, the undersigned, as such master in chancery, did offer the premises and property in the said advertisement and decree mentioned and described as all the certain lots, pieces, or parcels of land situate, lying, and being in the city of Chicago, in the county of Cook and State of Illinois, known and described as lots five (5) and six (6), in block three (3) of a
83 subdivision of a part of the northwest fractional quarter of section twenty-two (22), township thirty-nine, (39) north, range fourteen (14) east, of the third principal meridian, together with all the right, title, and interest of the said defendants in and to the party walls now standing on the north side of said lot five (5) and on the south side of said lot six (6) and the land whereon said walls stand, said lots being the same shown on a plat of a subdivision by the executors of the will of Eliza Garrett, deceased, which was recorded in the office of the recorder for the said county of Cook in Book 125 of Maps, page 45, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, for sale at public auction to the highest and best bidder, for cash in hand, and as follows, to wit: The undersigned first offered for sale said lot five (5), together with the right, title, and interest of said defendants in and to the party walls on the north side of said lot five (5), and no one bid for the same offered in that way; the undersigned then offered for sale said lot six (6), together with the right, title, and interest of said defendants in and to the party walls now standing on the south side of said lot six (6), and no one bid for same offered in that way; the undersigned then offered for
84 sale the whole of said premises and property together, whereupon the said complainant, by its solicitor, R. B. Kendall, Esquire, bid for said premises the sum of twelve thousand dollars, and, that being the highest bid therefor, the undersigned struck off and sold to said bidder said premises at the price so bid.

And, as provided for in said decree, the said complainant (purchaser as aforesaid), by its solicitor, has *only* paid over to the undersigned as such master in chancery the sum of eighty-seven dollars

and fifty-three cents, being the amount of the taxed costs herein, and has also paid the master's fees, commissions, and disbursements on said sale.

And the undersigned further reports that he has executed and delivered to said purchaser the certificate of sale directed in said decree to be executed and has filed in the office of the recorder of deeds of said Cook county, Illinois, duplicate of such certificate, paying the fees for the record thereof.

A particular statement of the said sale is hereto annexed, made a part hereof, and marked "Exhibit A," all of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated Chicago, June 25th, A. D. 1879.

85 EXHIBIT A.

10th May, 1879.	Decree for the sum of		$15,881 67
25th June, 1879.	Interest thereon at 6 per cent. per annum from the date of the entry of said decree		119 10
	Taxed costs		87 53
			$16,088 30
	Master's commissions on said sale	$180 00	
	Certificate of sale	50	
	Recording duplicate	85	
	Paid for advertising said sale	10 00	
	Report of sale	5 00	
	Clerk's commissions on sum paid into court		196 35
			$16,284 65
	Amount bid on said sale		12,000 00
	Amount unsatisfied under said decree		$4,284 65

Received of the said Henry W. Bishop, master in chancery of the circuit court of the United States for the northern district of Illinois, the sum of eighty-seven dollars and fifty-three cents, being the amount of the taxed costs herein.

WM. H. BRADLEY,
Clerk of the Circuit Court of the United States for the Northern District of Illinois.

Settled with Henry W. Bishop, master in chancery aforesaid, in accordance with the above statement.

ROB'T B. KENDALL,
Solicitors for said Complainant.

86 *Master's Sale.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Northern District of Illinois.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
PHILANDER C. HANFORD, ORRIN P. CHASE, Frederick Fake, and Lucy Duncan Fake, Wife of the said Frederick Fake. } In Chancery.

In pursuance of a decree of the said court entered in the above-entitled cause on the 10th day of May, A. D. 1879, I, Henry W. Bishop, master in chancery of the said court, will sell at public auction, to the highest and best bidder, for cash in hand, at the west door of the building in which this court is held, to wit, the building known as the National Life building, numbered 157 to 163 La Salle street, in the city of Chicago, in Cook county, Illinois, on Wednesday, the 25th day of June, A. D. 1879, at twelve (12) o'clock noon of said last-named day, the premises and property in said decree mentioned and described, as follows, to wit:

All the certain lots, pieces, or parcels of land situate, lying, and being in the city of Chicago, in the county of Cook and State of Illinois, known and described as lots five (5) and six (6), in block three (3) of a subdivision of a part of the northwest fractional quarter of section twenty-two (22), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian,
87 together with all the right, title, and interest of the said defendants in and to the party walls now standing on the north side of said lot five (5) and on the south side of said lot six (6) and the land whereon said walls stand, said lots being the same shown on a plat of a subdivision by the executors of the will of Eliza Garrett, deceased, which was recorded in the office of the recorder for the said county of Cook, in Book 125 of Maps, page 45, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging.

Dated Chicago, May 31st, A. D. 1879.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

ROBERT B. KENDALL,
Compl'ts' Sol'r.

I, MYRA BRADWELL, president of the Chicago Legal News Company, do hereby certify that a notice in the case of Union Mutual Life Insurance Company *vs.* Philander C. Hanford *et al.*, of which the annexed printed slip is a true copy, was published for four successive weeks, to wit, four times, in the Chicago Legal News, a weekly

secular newspaper published every Saturday in the city of
88 Chicago, county of Cook and State of Illinois, of general circulation throughout said county and State and specially authorized by law to publish legal notices in said city and county; and that the date of the first paper containing the same was the thirty-first day of May, A. D. 1879, and that the date of the last paper containing the same was the twenty-first day of June, A. D. 1879.

In witness whereof the president of said Chicago Legal News Company has hereunto affixed the seal of said company and subscribed her name, at the city of Chicago, this 21st day of June, A. D. 1879.

[SEAL.] MYRA BRADWELL, *President.*

And I further certify that said company has received ten dollars for publishing the said notice.

MYRA BRADWELL.
GEO.

(Endorsed:) Filed this 1st day of July, 1879. Wm. H. Bradley, clerk.

89 Afterwards, to wit, on the eighth day of April, in the adjourned March term of said court, 1880, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
PHILANDER C. HANFORD, ORRIN P. CHASE, FREDERICK L. FAKE, and LUCY DUNCAN FAKE. } In Chancery.

And now again comes the complainant, by its solicitor, Robert B. Kendall, and this cause comes on to be further heard upon the report of sale by Henry W. Bishop, master in chancery, filed herein on the first day of July, A. D. 1879; and thereupon, on motion of said complainant's solicitor, no cause to the contrary having been shown, and said sale and the actings and doings in said report mentioned appearing to have been done in conformity to law and the order of this court, it is ordered and decreed that said report and sale and the aforesaid actings and doings of said master in chancery be, and they are, fully approved and confirmed.

And it appearing to the court from said report that the said master has, as required by the decree in said cause, paid into the court and taken the receipt of W. H. Bradley, Esq., clerk, therefor
90 and filed the same with his report, the sum of eighty-seven dollars and fifty-three cents, being the amount of the taxed costs in said cause, and that after deducting the same, together with the master's fees, commissions, and disbursements, there remains to be applied upon the amount due to said complainant under said de-

cree the sum of eleven thousand seven hundred and sixteen dollars and twelve cents—

It is ordered that said clerk credit said last-mentioned sum on said decree as paid to said complainant on said first day of July, A. D. 1879.

And it further appearing to the court from said report that the proceeds of said sale were insufficient to pay the amount found and adjudged to be due to the complainant herein, and that there is a balance due to said complainant over and above such proceeds of sale — the sum of four thousand two hundred and eighty-four dollars and sixty-five cents, now, therefore, it is ordered, adjudged, and decreed by the court that the said complainant have and recover of and from the defendants, Philander C. Hanford and Orrin P. Chase, who are personally liable for the payment of said debt, the said last-mentioned sum of four thousand two hundred and eighty-four dollars and sixty-five cents, and that the complainant have execution therefor as upon a judgment at common law.

91 Afterwards, to wit, on the twenty-ninth day of April, 1880, came Philander C. Hanford and Orrin P. Chase, by their solicitor, and filed in said clerk's office their petition in said entitled cause, which petition is in the words and figures following, to wit:

92 NORTHERN DISTRICT OF ILLINOIS, *ss:*

In the Circuit Court of the United States, of the March Term, A. D. 1880. In Chancery.

THE UNION MUTUAL LIFE INSURANCE COMPANY, Comp.,
vs.
PHILANDER C. HANFORD, ORRIN P. CHASE, FREDERICK L. FAKE, and LUCY D. FAKE, Def'ts.

To the honorable the judges of the circuit court of the United States, in chancery sitting:

The petition of the above defendants, Philander C. Hanford and Orrin P. Chase, respectfully shows—

That your petitioners find themselves much aggrieved by a decretal order made by this court in this cause on the 8th day of April, A. D. 1880, whereby it was, among other things, ordered that your petitioners pay the deficiency found by the master, H. W. Bishop, in his report of sale of the mortgaged premises, and your petitioners submit that so much of the order is erroneous as directs payment of such deficiency by them, because your petitioners show unto your honors that the bill of complaint in this case contains no prayer for a personal decree for any deficiency on the sale against your petitioners.

That the compound interest received by the complainant from Lucy D. Fake, amounting to nearly three hundred dollars, ought to have been deducted from the amount of said de-
93 ficiency, and that said interest and other moneys paid to said complainant, amounting to nearly five hundred dollars, by

said Lucy D. Fake are a valid consideration for the agreement of said company to extend the time of payment of the principal notes for $11,000 from September 9th, 1874, to September 9th, 1875, and the actual extension of the time of payment thereof after due.

Your petitioners further show that they are in equity only sureties for the payment of the notes mentioned in the bill of complaint of said Lucy D. Fake, and are in equity entitled to treat the usurious interest paid by said Lucy D. Fake as a payment of interest in advance and before due as well as a valid consideration for the agreement to extend the time of payment of the principal notes.

And your petitioners further show that said decretal order has been settled and entered, but that they have been unable to examine it or the files in this case while this bill was being drafted, owing to the fact that the files of the court were packed in boxes for removal to the new offices.

Wherefore your petitioners pray that your honors will be pleased to vouchsafe a rehearing of this cause before this court, your petitioners submitting to pay such costs as the court shall award in case their complaint shall be found groundless.

94 And your petitioners will ever pray.

ORRIN P. CHASE,
PHILANDER C. HANFORD,
By D. BLACKMAN, *Their Solicitor.*

FAIRCHILD & BLACKMAN,
Sol'rs for Def'ts.

We certify that we have examined the case referred to in the foregoing petition and are of the opinion that the decretal order therein mentioned is erroneous in the particulars specified in said petition.

D. BLACKMAN,
WILLIAM S. EVERETT, *Counsel.*

Endorsed: Filed April 29, 1880. Wm. H. Bradley, clerk.

95 Afterwards, to wit, on the sixth day of July, in the July term of said court, 1880, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE UNION MUTUAL LIFE INSURANCE COMPANY
vs.
PHILANDER C. HANFORD *et al.*
} In Chancery.

On motion, leave is given defendants to file amendment to their petition herein.

On the same day, to wit, on the sixth day of July, 1880, came the defendants, by their solicitors, and filed in said clerk's office their amended petition in said entitled cause; which said amended petition is in the words and figures following, to wit:

96 U. S. Circuit Court, of the May Term, A. D. 1880.

THE UNION MUTUAL LIFE INSURANCE COMPANY
vs.
FRED. FAKE, LUCY D. FAKE, ORRIN P. CHASE, & PHILANDER C. HANFORD.

Amendments to the petition for a rehearing of this cause, filed April 29, 1880, to be inserted after the word "premises" in the last line of the first page and before the word "wherefore" in the 14th line of the 3d page in lieu of that part of the original petition contained between said words.

And your petitioners further show that on the 27th day of June, 1878, E. A. Warfield was appointed receiver of the rents accruing for the use of said premises; that one William Jansen was his tenant and occupied the mortgaged premises.

That on the 16th day of April, 1879, said Warfield was, by an order of this court, allowed to occupy said premises at a rent of $30.00 per month, and that no report of the said receiver appears among the records of this court.

That the master's report of the amount due on the notes and mortgage dated April 4th, 1879, is for the full amount of principal and interest and the sum paid for taxes without deduction of the previous year's rent.

That it appears from the master's report of the sale dated June 25, 1879, that he made no allowance for rent.

That on the 9th day of September, 1872, your petitioners conveyed the mortgaged premises to Lucy Duncan Fake, wife of
97 Fred. L. Fake, by deed, wherein said Lucy D. Fake assumed and promised to pay the notes secured by said mortgage and to deliver up, fully cancelled, to your petitioners, all of which was then well known to the complainant.

3. That the interest on the $5,000 note was 8 per cent. and on the $6,000 note ten per cent., payable annually and not semi-annually.

4. That the complainant and said Lucy D. Fake on or about the 9th day of September, 1872, entered into a valid agreement to make the interest thereafter payable semi-annually instead of annually, as expressed in the notes.

That on or about the 9th day of January, 1875, the complainant and Lucy D. Fake entered into valid agreement, by the terms of which the complainant extended the time for the payment of both notes to September 9th, 1875, the whole principal of said notes and $2,000.00 of interest having become due September 9th, 1874; in consideration whereof the said Lucy D. Fake paid complainant $340.00 premium for the extension, $216.68 interest on interest, being ten per cent. interest on each installment of semi-annual interest from the time it was payable up to said January 9th, 1875, and agreed to keep said principal of $11,000.00 up to September 9th, 1875, and pay the interest semi-annually at the rate specified in each note; all of which fully and at large appears in the files and rec-

ords of this cause in this court, to which, for greater certainty,
98 your petitioners beg leave to refer and to make a part of this their petition.

That said order of April 8th, 1880, is, as your petitioners are advised and humbly submit, erroneous, and that the same ought to be reversed or altered in several respects, to wit:

1st. That said order ought not to have been made until the receiver had made a report.

2d. That the order should have been that Lucy D. Fake pay the deficiency, and that execution issue against her property.

3d. That the court should have found Lucy D. Fake in equity the principal, your petitioners her surety for the debt and discharged from its payment, and should have refused to order the payment by them of the said deficiency without prejudice to complainant's right to sue on the notes at law; or,

4th. If the court should hold your petitioners liable, then the order should have referred the matter to the master, with instructions to deduct the extra sums paid as premium and usurious interest and whatever ought to be found in the receiver's hands when the complainant should become entitled to a deed.

Endorsed: Filed July 6th, 1880. Wm. H. Bradley, clerk.

99 Afterwards, to wit, on the sixth day of September, in the July term of said court, 1880, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
PHILANDER C. HANFORD *et al.*
} In Chancery.

And now again comes the complainant, by its solicitor, and the resignation of E. A. Warfield, the receiver heretofore appointed herein, having been accepted, upon motion of said solicitor it is ordered that James H. Gallery be, and he is hereby, appointed receiver of the property and of the rents, issues, and profits described in the bill of complaint herein, and said receiver is directed to pass his accounts from time to time and pay his balances into this court to the credit of this cause, and said receiver is ordered to file in this court his bond in the sum of one hundred dollars, to be approved by this court, for the faithful performance of his duty as such receiver.

100 Afterwards, to wit, on the fourth day of October, in the adjourned October term of said court, 1880, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following, to wit:

Order.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
PHILANDER C. HANFORD *et al.* } In Chancery.

On this day comes said complainant, by R. B. Kendall, its solicitor, and also comes Henry W. Bishop, a master in chancery of this court, and presents to the court the deed of said master conveying to said complainant the premises in the bill of complaint mentioned, in accordance with the sale in this cause heretofore reported by said master, which deed bears date the twenty-seventh day of September, A. D. 1880.

And it appearing to the court that no redemption has been made from said sale, and that said complainant is entitled to said deed, it is therefore, on motion of said complainant's solicitor, ordered by the court that said master's deed be approved and confirmed, and the said master is directed to deliver the same to said complainant.

101 Afterwards, to wit, on the twenty-seventh day of October, in the adjourned October term of said court, 1880, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
PHILANDER C. HANFORD *et al.* } In Chancery.

Now come the parties, by their solicitors, and, upon petition of defendant- heretofore filed herein, on motion of defendants' solicitor, it is ordered by the court that the deficiency decree entered herein on the eighth day of April, A. D. 1880, be, and the same is hereby, set aside and vacated, with leave to complainant to move for a deficiency decree upon adjustment of the receiver's accounts herein.

Afterwards, to wit, on the first day of December, 1880, came Henry W. Bishop, one of the masters in chancery of said court, and filed in said clerk's office his report in said entitled cause; which said report is in the words and figures following, to wit:

102 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

THE UNION MUTUAL LIFE INSURANCE COMPANY
v.
PHILANDER C. HANFORD and Others.

Master's Report.

On the report of E. A. Warfield, receiver, filed September 6th, 1880.

To the honorable the judges of the said court:

I, Henry W. Bishop, master in chancery of the said court, to whom, by an order of said court heretofore entered herein, the said report of the receiver was referred for examination and report, do hereby report that, having notified the parties interested that a hearing for the purposes in the said order expressed would be had before me, at my office, on the 30th day of September, A. D. 1880, I was attended on that day by the said receiver, who produced in evidence before me his report and account as such receiver. I was also attended by Mr. Kendall, of counsel for said complainant; Mr. Blackman, of counsel for defendant Chase, and Mr. Asay, of counsel for the receiver.

I was again attended, by adjournment on various subsequent occasions, by the said counsel for complainant and for
103 the receiver and Leonard Swett, Esq., of counsel for complainant, and by said receiver and by Daniel Sharp, who testified herein, and whose testimony was duly taken, is hereto annexed, and made a part hereof. Upon the hearing and examination of said testimony and report of the receiver and the vouchers introduced in support thereof, and after hearing the suggestions of counsel, I find and report said report and account of the receiver to be correct, except so far as the compensation of said receiver is concerned, which compensation I find to amount to the sum of seventy-four dollars (74), and also the sum of twenty-seven dollars and seventy-eight cents for attorneys' fees, and I respectfully recommend that an order be entered confirming said report and account, with this allowance in the place of the one stated in the said account.

All of which is respectfully submitted.

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated Chicago, November 27, 1880.

Endorsed: Filed Dec. 1st, 1880. Wm. H. Bradley, clerk.

104 Afterwards, to wit, on the first day of March, 1881, in the December term of said court, 1880, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
PHILANDER C. HANFORD *et al.*
} In Chancery.

Now comes Robert B. Kendall, Esq., and, by leave of court, withdraws his appearance as complainant's solicitor; and now comes E. R. Bliss, Esq., and by like leave, enters his appearance as solicitor for said complainant herein.

Afterwards, to wit, on the first day of December, 1885, came the receiver and filed in said clerk's office his report in said entitled cause; which said report is in the words and figures following, to wit:

105 (Copy.)

The 1st account of E. A. Warfield, receiver, appointed by the circuit court of the United States for the northern district of Illinois, in a suit in which the Union Mutual Life Insurance Company is the complainant and P. C. Hanford *et al.* are defendants, in chancery.

The receiver charges himself with the following sums of money, viz:

Sept.	6, 1878.	Wm. Jansen			30
"	10, "	"	"	balance Aug.	10
Jan.	15, '79.	"	"	acc. Sept.	20
"	30, "	"	"	bal. Sept. & Oct.	60
Feb.	19, "	"	"	Nov.	40
Apr'l	2, "	"	"	Dec.	40
"	" "	"	"	Jan'y	40
"	" "	"	"	acc. Feb.	20
May	7, "	"	"	bal. Feb.	20
"	" "	"	"	acc. Mar.	30
Sept.	30, "	E. A. W.		to Oct. 1	150
Dec.	18, "	"	"	" Jan. 1	90
Jan.	31, '80.	"	"	" Feb. 1	30
Feb.	28, "	"	"	" Mar. 1	30
Mar.	31, "	"	"	" Apr. 1	30
	Apr. 30, '80.	E. A. W.		to May 1	30
106	May 31, "	"	"	" June 1	40
	June 30, "	"	"	" July 1	40
July	31, '80,	E. A. W.		to Aug. 1	40
Sept.	2, "	"	"	" Oct. 1	80

The receiver asks to be allowed for the following disbursements:

Dec.	4th, 1878.	Water tax	12	
"	" "	Copy of order	1	
"	19, "	O. W. Barrett, insurance	12	90

Jan. 30,	'79.	Decker & B. repairs on furnace		17	
" "	"	J. L. Pattison & Co., plumbing		31	87
Feb. 19,	"	Gas fixtures (Jansen)		40	
Apr. 2,	"	U. S. marshal's fees		2	12
Apr. 8,	"	Water tax		9	
May 7,	"	W. H. Brown, scavenger		5	
" 12,	"	G. F. Whidden, repairs		376	
" "	"	Brown & B., repairs on furnace		14	
" 20,	"	L. Krienke, cleaning		6	75
" 26,	"	J. Watt, plumbing		45	70
June 2,	"	Copy of order Apr. 16, 1879			60
July 22,	"	Water tax to May 1st, 1880		18	
" 26,	"	8th ins't So. p'k		6	34
		To sheet No. 2	870	598	28
May 26,	'80.	From sheet No. 1	870	598	28
		Water tax to Nov. 1	80	9	45
" 28,	"	Shaffer & Co., roof	--	23	
		Brown, furnace	--	65	
		" smoke-stack	--	8	
Sep. 2,	"	Receiver's services	--	150	
" "	"	Cash on hand	--	16	27
			870	870	00

Chicago, Sept. 2, 1880.
(Signed) E. A. WARFIELD, *Receiver.*

Paid E. Gorvit 2, ex. ac.

The above is a true copy of the report filed by me about
107 Sept. 2nd, 1880, as receiver in the above-entitled cause. Said report was referred to H. W. Bishop, master in chancery, and approved Nov. 27th, 1880. The receiver's charges for services being reduced to seventy-four dollars, and an allowance for attorney's fees being made for twenty-seven dollars and seventy-eight cents, said report being approved and the receiver discharged, the sum of forty-nine dollars and twenty-two cents was paid by me to said master.

E. A. WARFIELD.

(E. & O. E.)
Chicago, Dec. 1, 1885.

Endorsed: Filed Dec. 1, 1885. Wm. H. Bradley, clerk.

Afterwards, to wit, on the twenty-first day of January, 1886, came the receiver and filed in said clerk's office his report in said entitled cause; which said report is in the words and figures following, to wit:

108 The first account of E. A. Warfield, receiver, appointed by the circuit court of the United States for the northern district of Illinois, in a suit in which the Union Mutual Life Insurance Company is the complainant and P. C. Hanford *et al.* are defendants, in chancery.

The receiver charges himself with the following sums of money, viz:

Sept.	6, 1878.	Wm. Jansen		30
"	10, "	"	bal. Aug.	10
Jan'y	15, 1879.	"	acct. Sept.	20
"	30, "	"	bal. Sept. & Oct.	60
Feb'y	19, "	"	Nov.	40
Apr.	2, "	"	Dec.	40
"	" "	"	Jan'y	40
"	" "	"	ac. Feb'y	20
May	7, "	"	bal. "	20
"	" "	"	ac. M'ch	30
Sept.	30, "	E. A. W. to	Oct. 1	150
Dec.	18, "	"	Jun- 1	90
Jan'y	31, 1880,	"	Feb'y 1	30
Feb'y	28, "	"	Mar. 1	30
Mar.	31, "	"	Apr. 1	30
Apr.	30, "	"	May 1	30
May	31, "	"	June 1	40
June	30, "	"	July 1	40
July	31, "	"	Aug 1	40
Sept.	2, "	"	Oct. 1	80

The receiver asks to be allowed the following disbursements:

Dec.	4, 1878.	Water tax	12	
"	" "	Copy of order	1	
"	19,	O. W. Barrett, insurance	12	90
Jan'y	30, '79.	Decker & B., repair on furness	17	

109

Jan'y	30, 1879.	J. L. Patterson & Co., plumbing	31	87
Feb'y	19, "	Gas fixtures (Jansen)	40	
Apr'l	2, "	U. S. marshall's fees	2	12
"	8, "	Water tax	9	
May	7, "	W. H. Brown, scavenger	5	
"	12, "	Geo. F. Widden, repairs	376	
"	" "	Brown & B., rep'g furnace	14	
"	20, "	L. Krienke, cleaning	6	75
"	26, "	J. Watt, plumbing	45	70
June	2, "	Copy of order, Apr. 16, '79		60
July	22, 1879.	Water tax to May 1, '80	18	
Apr.	26, '80.	8th inst. So. p'k	6	34
		To sheet No. 2 870	598	28

		From sheet No. 1	870	598	28
May	26, 1880.	Water tax to Nov. 1, '80	--	9	45
"	28, "	Shaffee & Co., roof	--	23	
		Brown, furnace	--	65	
		" smoke stack	--	8	
Sept.	2, 1880.	Receiver's services	--	150	
"	" "	Cash on hand	--	16	27
			870	870	00

Chicago, Sept. 2, 1880.

(Signed) E. A. WARFIELD,
Receiver, &c.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

In the United States Circuit Court for the Northern District of Illinois.

110 January Term, A. D. 1886.

UNION MUTUAL LIFE INS. CO. *v.* PHILANDER C. HANFORD *et al.* } In Chancery.

E. A. Warfield, being first duly sworn, deposes and says that the foregoing account is an exact copy of the first and final account filed by him as receiver in the above-entitled cause on or about the 6th day of September, 1880.

E. A. WARFIELD.

Subscribed & sworn to before me this 21st day of January, A. D. 1886.

CALVIN F. TAYLOR,
Notary Public.

[SEAL.]

Endorsed: Filed Jan'y 21, 1886. Wm. H. Bradley, clerk.

Afterwards, to wit, on the second day of February, 1880, came the Union Mutual Life Insurance Company, by its solicitors, and filed in said clerk's office a notice and petition in said entitled cause; which said notice and petition are in the words and figures following, to wit:

111 UNITED STATES OF AMERICA,
Northern District of Illinois:

In the Circuit Court for said District.

UNION MUTUAL LIFE INS. CO.
vs.
PHILANDER C. HANFORD, ORRIN P. CHASE, FREDERICK FAKE, and LUCY DUNCAN FAKE, His Wife.

To Daniel Blackman, Esq., solicitor for Philander C. Hanford & Orrin P. Chase, Portland block:

Please take notice that on Friday morning, Jan. 28th, at ten o'clock, or as soon thereafter as counsel can be heard, before his honor Henry W. Blodgett, in his court-room, in the custom-house building, in Chicago, we shall ask leave to file the petition of the Union Mutual Life Ins. Co., a copy of which is hereto attached *nunc pro tunc* as of the 5th day of April, A. D. 1886.

Please take notice that at the same time and place we shall also ask the court to enter an order disposing of said petition.

At which time and place you may appear if you see fit so to do.

SWEET, GROSSCUP & SWEET,
Sol'rs for Complainant.

Service accepted this 26th day of Jan., A. D. 1887.

D. BLACKMAN,
Sol'r for Defendants.

112 UNITED STATES OF AMERICA,
Northern District of Illinois.

In the Circuit Court of said District.

UNION MUTUAL LIFE INS. CO.
vs.
PHILANDER C. HANFORD, ORRIN P. CHASE, FREDERICK FAKE, and LUCY DUNCAN FAKE, His Wife. } In Chancery.

To the honorable judges of said court:

Your petitioner, The Union Mutual Life Insurance Company, complainant in the above-entitled cause, respectfully shows unto your honors that on or about the 9th day of September, 1870, the said defendants, Philander C. Hanford and Orrin P. Chase, for value received, executed and delivered to Jacob L. Schureman two certain promissory notes bearing date the said 9th day of September, one of said notes being for the sum of $5,000, payable two years after date, and one for the sum of $6,000 payable on or before the 9th day of September, 1873, and that for the purpose of securing the said notes the said Orrin P. Chase and Philander C. Hanford also at the same time executed and delivered to the said Jacob L. Shureman a certain mortgage under their respective hands and seals bearing date the said 9th day of September, 1887, and that said mortgage

and notes were afterward assigned to your petitioner for a
113 valuable consideration and became the property of your petitioner, which notes and mortgage are more fully recited in your petitioner's bill of complaint in this cause, to which reference is hereby prayed.

Your petitioner further represents that, default having been made in the payment of the said notes and the interest thereon and the taxes upon the property secured by the said mortgage, your petitioner, on the 30th day of March, 1878, filed its bill of complaint in this cause praying for a foreclosure of the said mortgage.

Your petitioner further represents that such proceedings were had in said cause that on the 10th day of May, 1879, this honorable court entered a decree of sale which recites that there was due at the date of the entry of said decree to the complainant from the said defendants, Philander C. Hanford and Orrin P. Chase and Lucy Duncan Fake, the sum of $15,881.67, and that the said Philander C. Hanford or Orrin P. Chase or some of the other defendants in this case pay or cause to be paid to your petitioner within ten days from the entry of said decree the sum of $15,881.67, with interest thereon, at the rate of six per cent. per annum, from the date of the entry of this decree to the date of such payment, and also
114 pay into court the costs in this court, to be taxed, and in default of so doing that Henry W. Bishop, master in chancery of this court, should sell the said premises described in said mortgage and as provided in said decree, and apply the proceeds to the satisfaction of such indebtedness in the manner and form also prescribed by said decree.

Your petitioner further represents that none of said defendants paid the said sum of money or any part thereof or any of the costs, and in no manner complied with said decree, and that in default thereof the master, pursuant to said decree, advertised and sold the said premises upon the twenty-fifth day of June, 1879.

Your petitioner further represents that the costs, master's fees, and other amounts which the said decree recited should be paid by the said defendants, together with the said decree, amounted to the sum of $16,284.65 upon the 25th day of June, 1879.

Your petitioner further represents that at said sale your petitioner purchased the said premises for the sum of $12,000, and that the said master applied said $12,000 to the payment of said de-
115 cree, and on said 25th day of June, 1879, reported to this court that there remained due from the said defendants to your petitioner, after giving such credit, the sum of $4,284.65, which report is now on file and to which reference is hereby made.

Your petitioner further represents that, though often requested so to do, the said Philander C. Hanford and Orrin P. Chase have refused and still refuse to pay to your petitioner said amount, with interest thereon at the rate of 6%, as prescribed in said decree.

Your petitioner further represents unto your honor that there is due to your petitioner from the said Philander C. Hanford and Orrin P. Chase or either of them upon the fifth day of April, 1886, the sum of $6,027, and your petitioner therefore prays that a deficiency de-

cree may be entered against the said Philander C. Hanford and Orrin P. Chase, as of the date of April 5th, 1886, for $6,027.

And your petitioner will ever pray.

UNION MUTUAL LIFE INS. CO.,
By SWETT, GROSSCUP & SWETT,
Its Solicitors.

SWETT, GROSSCUP & SWETT, *Of Counsel.*

Endorsed: Filed Feb'y 2, 1886. Wm. H. Bradley, clerk.

116 Afterwards, to wit, on the eighth day of February, 1886, in the December term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
PHILANDER C. HANFORD *et al.*
} In Chancery.

Now come the parties, by their solicitors, and now comes on to be heard the complainant's motion to substitute a new receiver's report in the place of the receiver's report, which appears to be lost, and for a deficiency decree, and after hearing the arguments of counsel the above-mentioned matters are submitted to the court upon briefs to be furnished.

117 Afterwards, to wit, on the fifth day of April, in the adjourned March term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
PHILANDER C. HANFORD *et al.*
} In Chancery.

The court, having considered the complainant's motion for a deficiency decree herein against the defendants Hanford and Chase, overrules the same; thereupon the complainant, by its solicitor, moves the court for a reference of this cause to a master in chancery.

118 & 119 Afterwards, to wit, on the twenty-eighth day of January, 1887, in the December term of said court, 1886, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
PHILANDER C. HANFORD, ORRIN P. CHASE, FREDERICK FAKE, and LUCY DUNCAN FAKE. } In Chancery.

And now comes the complainant, by its solicitors, Swett, Grosscup & Swett, and, the defendants, Philander C. Hanford and Orrin P. Chase, by their attorney, Daniel Blackman, consenting, files herein its petition for a deficiency decree *nunc pro tunc* as of Tuesday, February 2, 1886. The complainant, having withdrawn its motion heretofore made for a reference to the master to take testimony, prays an appeal to the Supreme Court of the United States from the order entered in this cause on the fifth day of April, 1886, overruling the complainant's motion for a deficiency decree against the defendants, Philander C. Hanford and Orrin P. Chase, and the court, being fully advised, grants said appeal on condition that the complainant file herein its appeal bond in the penal sum of one thousand dollars before March first, 1887, said bond to be approved by the court or its clerk.

120 Afterwards, to wit, on the seventh day of February, 1887, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

121 *Appeal Bond.*

Know all men by these presents that we, The Union Mutual Life Insurance Company and David G. Hamilton, are held and firmly bound unto Philander C. Hanford, Orrin P. Chase, Frederick Fake, and Lucy Duncan Fake in the full and just sum of one thousand $\frac{00}{100}$ dollars, to be paid to the said Philander C. Hanford, Orrin P. Chase, Frederick L. Fake, and Lucy Duncan Fake, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this seventh day of February, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas lately, at a term of the circuit court of the United States for the northern district of Illinois, in a suit depending in said court between The Union Mutual Life Insurance Company, complainant, and Philander C. Hanford, Orrin P. Chase, Frederick L. Fake, and Lucy Duncan Fake, defendants, a final order in said suit was rendered against the said Union Mutual Life Insurance Company, complainant, denying and overruling its motion for a deficiency decree in said cause against the said Philander C. Hanford, Orrin P. Chase, and the said Union Mutual Life Insurance Company
122 having obtained an appeal to reverse the said order in the aforesaid suit and a citation directed to the said Philander

C. Hanford and Orrin P. Chase, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Union Mutual Life Insurance Company shall prosecute its said appeal to effect and answer all damages and costs if it fails to make its appeal good, then the above obligation to be void; else to remain in full force and virtue.

[Seal of Company.]

UNION MUTUAL LIFE INSURANCE COMPANY,
By JOHN E. DE WITT, *President.*
DAVID G. HAMILTON. [SEAL.]

Sealed and delivered in presence of—
——— ———.

Approved by—
H. W. BLODGETT, *Judge.*

Endorsed: Filed Feb'y 7, 1887. Wm. H. Bradley, clerk.

123 Afterwards, to wit, on the thirteenth day of October, 1887, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA, }
Northern District of Illinois. }

In the United States Circuit Court for the Northern District of Illinois.

THE UNION MUTUAL LIFE INS. CO. OF PORTLAND, MAINE,
vs.
PHILANDER C. HANFORD, ORRIN P. CHASE, FREDERICK FAKE, and LUCY DUNCAN FAKE. } In Chancery.

It is hereby agreed and stipulated between the parties hereto that the receiver's report filed on the 21st day of January, A. D. 1886, is an exact copy of a report filed by said receiver, E. A. Warfield, on the 6th day of September, 1880, which said first report could not be found in the files, and which said first report was referred to Henry W. Bishop, master in chancery, and approved Dec. 1st, 1880.

SWETT & GROSSCUP,
Solicitors for Complainant.
D. BLACKMAN,
Sol'r for P. C. Hanford.

Endorsed: Filed Oct. 13, 1887. Wm. H. Bradley, clerk.

124 Afterwards, to wit, on the fourteenth day of October, 1887, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA,
Northern District of Illinois.

In the United States Circuit Court for the Northern District of Illinois.

THE UNION MUTUAL LIFE INSURANCE COMPANY OF PORTLAND, MAINE,
vs.
PHILANDER C. HANFORD, ORRIN P. CHASE, FREDERICK FAKE, and LUCY DUNCAN FAKE. } In Chancery.

It is stipulated and agreed between the parties hereto that the foregoing is a complete record of all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing of this case in this court or in the Supreme Court of the United States, to which this case is appealed.

SWETT & GROSSCUP,
Solicitors for Complainant.
D. BLACKMAN,
Sol. for P. C. Hanford.

Endorsed: Filed Oct. 14, 1887. Wm. H. Bradley, clerk.

125 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court under the stipulation filed October fourteenth, 1887, in the cause wherein The Union Mutual Life Insurance Company of Portland, Maine, is the complainant and Philander C. Hanford, Orin P. Chase, Frederick Fake, and Lucy Duncan Fake are the defendants, as the same appear from the files and records of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this fourteenth day of October, 1887.

WM. H. BRADLEY, *Clerk.*

126 UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

To Philander C. Hanford and Orrin P. Chase, Greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1887, pursuant to an order entered in said court allowing the complainant to appeal, which order was entered on the 28th day of January, A. D. 1887, and appears of record in the clerk's office of the circuit court of the United States for the northern district of Illinois, in a cause wherein The Union Mutual Life Insurance Company is complainant and Philander C. Hanford, Orrin P. Chase, Frederick Fake, and Lucy Duncan Fake are defendants, to show cause, if any there be, why the said final order in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, judge, this seventh day of February, in the year of our Lord one thousand eight hundred and eighty-seven.

H. W. BLODGETT, *Judge.*

127 [Endorsed:] 15486. Supreme Court of the United States. Union Mutual Life Ins. Co. *vs.* Philander C. Hanford *et al.* Citation to October term, A. D. 1887.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

We admit and accept service of this citation this 9th day of February, 1887.

P. C. HANFORD,
O. P. CHASE,
P'r D. BLACKMAN,
Att'y-in-Fact.

Endorsed on cover: N. Illinois C. C. U. S. No. 254. The Union Mutual Life Insurance Company, appellant, *vs.* Philander C. Hanford and Orrin P. Chase. Filed October 17, 1887.

Office Supreme Court U. S.
FILED.
NOV 4 1887
JAMES H. McKENNEY,
Clerk.

IN THE

SUPREME COURT OF UNITED STATES.

OCTOBER TERM, A. D. 1887.

THE UNION MUTUAL LIFE INSURANCE COMPANY

vs.

P. C. HANFORD ET AL.

Appeal from an order of the Circuit Court of the United States for the Northern District of Illinois.

D. BLACKMAN,

Counsel for Defendants.

CHICAGO:
HORACE O'DONOGHUE, BRIEF AND ABSTRACT PRINTER, 53-55 DEARBORN ST.
1887.

IN THE

SUPREME COURT OF UNITED STATES.

OCTOBER TERM, A. D. 1887.

THE UNION MUTUAL LIFE INSURANCE COMPANY

vs.

P. C. HANFORD ET AL.

Appeal from an order of the Circuit Court of the United States for the Northern District of Illinois.

This is a motion by appellees Hanford and Chase to dismiss the cause for want of jurisdiction *in this court*.

The bill was filed by the Appellant, the Insurance Company, as assignee of J. L. Shureman, against Hanford and Chase, mortgagors, and Lucy D. Fake, their grantee, and her husband, Fred L. Fake, to foreclose a mortgage on property in Chicago.

The bill was filed March 30, 1878. The defendants admitting the execution of the mortgage and notes, and, to avoid their personal liability, alleged that on Septem-

ber 9, 1872, they conveyed the premises to Lucy D. Fake, who, as a part of the consideration of the deed, promised to pay and surrender the notes, which fact was known to the complainant.

That about January 1, 1874, the parties, Mrs. Fake and complainant, made a valid contract to change the terms of the notes, and they being past due, to extend the time of payment.

The bill was taken as confessed by the Fakes.

A receiver was appointed. An *ex parte* decree was entered May 10, 1878, finding due by the defendants $15,581.67, and ordering a sale.

The master's report of the sale, dated June 25, 1879, was filed July 1, 1879, and confirmed by an *ex parte* order April 8, 1880, which found the balance due July 1, 1879, to be $4,284.63. (*See Record, p. 90.*)

There had been no account of the receiver filed previous to the sale, but September 6, 1880, his account was filed, and December 1, 1880, the master filed his report thereon.

At this date complainant became entitled to move for a decree for the balance and for an execution.

In this case the only way to settle the various equities of the parties was by a petition and bringing all the parties before the court.

But nothing was done until February 8, 1886, when a motion by complainant to substitute a new receiver's report for the supposed lost one, and for a deficiency decree, was submitted to the court on briefs. (*Record, p. 115.*)

On this motion, April 5, 1886, the court made this order:

"The court having considered the complainant's mo-

" tion for a deficiency decree herein against the defend-
" ants, Hanford & Chase, overrules the same; whereupon
" the complainant, by its solicitors, moves *the court for a*
" *reference of this cause to a master in chancery.*" (*Record, p. 117.*)

It is from this order that the appeal is taken It will be seen from the motion above that the probable intention of the complainant was simply to deduct from the $4,284.65 the sum due from the receiver, and take a decree for the balance.

Afterwards, January 28, 1887 (*Record, p. 118*), an order was entered allowing an appeal, and reciting that the complainant filed the petition found on page 112, and withdrew its motion heretofore made for a reference to the master to take testimony.

The above is so much of the history of the proceedings, as they appear in the record, that relate to the order appealed from and this motion.

The appellees say this court has no jurisdiction over this appeal, because, first, the order is interlocutory, although it does not decide the motion to refer. That an order of reference to a master is interlocutory will not bear discussion or authorities.

It may be said that portion has been vacated. It has not been vacated by an order of this court, and an order of court cannot be vacated by one of the parties to the suit nor waived.

The recital in the order allowing the appeal that " complainant, having withdrawn his motion for a reference," etc., does not in any manner change the order from interlocutory to final, for it is not the act of the court, nor has its consent been obtained.

But the court can not do it; that is, change a non-

appealable order to an appealable one, or vice versa, after its entry to give or prevent an appeal.

In this case the appellant was satisfied with the denial of the decree, and, instead of taking a final order, took an interlocutory one. It waived a final order purposely. However, these discussions are useless, for the order stands on the record unvacated and unchanged.

That no reference was ever had and nothing done with the motion, does not alter the character of the order, which proposed further proceeding in the Circuit.

Second—By report of the master in this case, filed July 1, 1879, and confirmed by the court April 8, 1880, the balance found by the court to be due was $4,284.65. This is the "only balance that may be found due to the complainant over and above the proceeds of the sale," "for which an execution may issue," referred to in Rule 92. This sum being less than $5,000, no appeal lies.

This point, as to decree, is decided in *Kaiser* v. *Cox*, 116 Ill. 26, where it is said "accruing interest cannot be added to make up the sum necessary to give an appeal or writ of error." The reason upon which the decision is founded is probably this: Interest is given as damages for non-payment, and not as a part of a contract, in the case cited above; otherwise the right of appeal would depend on the action or non-action of complainant. If the court is with him, he moves early, and there is no appeal. If against him, he delays until the sum, by addition of interest, is large enough.

See *Udall* v. *Steamship Ohio*, 17 How. 17, where the same rule as to interest is held.

The rule of law stated in *Baltimore & P. Railroad* v.

Trook, 10 Otto, 112, would also deny an appeal, as the sum denied is less than $5,000, after deducting from the sum claimed, $15,000, the sum recovered, $12,000.

Inasmuch as appellant waived his right to appeal by moving for further proceedings in the Circuit Court after his motion was denied, and as interest cannot be added to the balance that may be found due over the proceeds of the sale, this appeal is a nullity.

D. BLACKMAN,
Counsel for Defendant.

J. H. McGowan
Counsel for Defendant

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1887.

THE UNION MUTUAL LIFE INSURANCE COMPANY

vs.

P. C. HANFORD ET AL.

} **APPEAL.**

Brief of Appellant on Motion to Dismiss Appeal.

LEONARD SWETT,
P. S. GROSSCUP,
COUNSEL FOR APPELLANT.

BARNARD & GUNTHORP, LAW PRINTERS, 44 & 46 LASALLE ST., CHICAGO

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1887.

THE UNION MUTUAL LIFE INSURANCE COMPANY
vs.
P. C. HANFORD ET AL.

APPEAL.

Brief of Appellant on Motion to Dismiss Appeal.

The motion to dismiss the appeal is based upon two grounds; (*a*) that the decree appealed from is not final; and (*b*) that the matter in dispute, exclusive of costs, does not exceed the sum of $5,000.

The following is a summary of those parts of the record pertinent to the questions raised by the motion:

The appellant was the holder of promissory notes executed by the appellees, Hanford and Chase, and secured by mortgage upon certain premises in Chicago, which premises were, prior to March 30, 1878, conveyed to Lucy D. Fake, subject to the mortgage, the grantee assuming the payment of the mortgage debt.

March 30, 1878, the appellant filed its bill for a foreclosure of the mortgage, and May 10, 1878, obtained a decree, finding the amount due on the notes and mortgage to be $15,581.67, and ordering that in default of payment of this sum, with interest thereon at six per cent., within the time named, the mortgaged premises be sold at public sale. (Rec., 73.)

June 25, 1879, the premises were sold under the decree for $12,000. This sale was reported by the master, who also reported the original decree to have been unsatisfied, by the sale, to the amount of $4,282.65. (Rec., 79)

April 8, 1880, the sale was confirmed, and a deficiency decree entered against Hanford and Chase for $4,282.65. (Rec., 90.)

April 29, 1880, Chase and Hanford filed their petition to have the deficiency decree vacated, because: (1) the bill contained no prayer for a personal decree; (2) interest had been received which was not applied upon the debt; and (3) the appellant had, without the consent of Chase and Hanford, granted to Lucy D. Fake, upon a good consideration, an extension of time for the payment of the notes. (Rec., 91.)

July 6, 1880, this petition was amended by adding another reason, as follows: That on June 27, 1878, one Warfield was appointed receiver in the foreclosure suit, and as such went into possession of the mortgaged premises, and received rents therefrom, but had made no report thereof, whereby the proper amount of the deficiency was not yet determinable. (Rec. 95.)

October 27, 1880, an order was entered upon the petition and amended petition setting aside the deficiency decree, with leave to appellant to move again for a de-

ficiency decree upon the adjustment of the receiver's account. (Rec. 101.)

September 6, 1880, the receiver filed his report, a copy of which is stipulated into this record (Rec., 23), showing that after crediting himself with $150.72 for services, there remained in his hands $16.27. (Rec., [illegible] 105)

November 27, 1880, the master reported upon this receiver's report, finding it to be correct, except the charge of $150.72 for services, which the master found should have been for $74, and $27.78 for attorney's fees; thus increasing the amount in the hands of the receiver, applicable as a credit upon the deficiency from $16.27 to $65.21. (Rec., 102.)

To these reports of the receiver and master no exceptions were filed by the appellee.

February 2, 1886, the appellant filed a motion—for which a petition was subsequently substituted and filed *nunc pro tunc* as of February 2, 1886 (Rec., 113)—for a decree for the deficiency, which, with interest to that date, amounted to $6027.

February 8, 1886, this motion was argued and taken under advisement. (Rec., 106.)

April 5, 1886, the motion was disposed of by the following order: "The court having considered the com-"plainant's motion for a deficiency decree herein against "the defendants, Hanford and Chase, overrules the same; "whereupon the complainant, by its solicitors, moves the "court for a reference of this cause to a master in chan-"cery." (Rec., 107.)

January 28, 1887, leave was given to substitute for the motion above a formal petition for a deficiency decree *nunc pro tunc* as of February 2, 1886; and the appellant,

withdrawing its motion for a reference to a master, took an appeal from the order overruling the petition. (Rec., 117.)

Upon this record we respectfully submit:

First. The order of April 5, 1886, is not an interlocutory, but is a final decree.

But for the recital in the entry embodying the order, that the appellant moved a reference of the case to a master, there could be no question of its character as a final order. Expunge the motion and the order finally disposes of the appellant's right to a decree for the deficiency. Now the entry of the motion for a reference is no part of the order *as an order*. The order and the motion are as distinct as if they stood in separate entries. The order does not act upon the motion. Possibly the motion should be acted upon before an appeal would lie, but its withdrawal by the appellant before the appeal was taken removed the objection.

Second. The matter in dispute at the time of the entry of the order exceeded the value of $5,000.

The amount found due by the decree of foreclosure, with interest to May 25th, the day of the sale, was $16,284.65. Upon this amount the appellees were entitled to a credit of $12,000, the amount for which the premises sold. The balance of the original decree remained from that time unpaid.

By the 92d equity rule the court was authorized, upon motion of the appellant, to enter a further decree making this unpaid balance a personal judgment against the defendants. It was not necessary that such deficiency decree should be applied for, or entered, at once. Circumstances might make that impossible. The circum-

stance in this case, that a receiver of rents and profits had not yet accounted to the court, did make it impossible, and caused the court to vacate a decree prematurely entered. Foreclosure of the mortgage and proceedings for a personal decree for the deficiency are entirely distinct remedies. One is *in rem*, the other *in personam*. Except for the 92d rule they would have been enforceable only by separate actions. The purpose and effect of the 92d rule is to consolidate these two distinct remedies into one action.

But the consolidation does not make the judgments entered upon the several remedies applied for, any the less separate judgments, each subject to the right of appeal, as if they stood in separate actions. The judgment *in personam*, therefore, is to be considered as a judgment standing alone, and as rendered on the date it was entered.

Upon that date, April 5, 1886, the value of the matter in dispute upon which that judgment acted was $6,027. That was the value of the claim which the judgment denied to appellant.

Hilton v. *Dickenson*, 108 U. S., 165.

In *New York Elevated R. R.* v. *Fifth National Bank*, 118 U. S., 608, this court decided that the value of the matter in dispute was to be computed as of the date of judgment, and not the date of verdict; and, therefore, interest accruing between the date of verdict and the date of judgment became, for jurisdictional purposes, an additional part of the value of the matter in dispute.

In "*The Patapsco*," 12 Wallace, 451, the decree appealed from was for $1,982.07, "and the interest thereon from the date of the report." This sum, thus increased

by the interest, exceeded $2,000. This court held that the value of the matter in dispute was not merely the amount previously reported to the court below to have been due, but that amount increased by the accruing interest to the date of the decree.

The doctrine of the above cases would have given the appellees in this case an unquestioned right to appeal, if the order had been in favor of the appellant for the amount claimed in his petition. If the value of the matter in dispute accorded to the appellee the right of appeal which it denied to the appellant, the legislature has given the appellees an advantage over their antagonist; the effect which Chief Justice ELLSWORTH, in *Wilson* v. *Daniel*, 3 Dallas, 401, says: "It is not to be presumed that the "legislature intended to give"; and of which Chief Justice WAITE in *Hilton* v. *Dickenson*, *supra*, says: "Such "a result ought to be avoided, and it may be, by holding "as we do, that, as to both parties, the matters in dispute "on which our jurisdiction depends is the matter in dis- "pute 'between the parties as the case stands upon the "writ of error' or appeal, that is to say, as it stands in "this court."

Respectfully submitted.

LEONARD SWETT,
P. S. GROSSCUP,
Counsel for Appellant.

Office Supreme Court U. S.
FILED,
MAR 10 1891
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1890.

No. 254.

THE UNION MUTUAL LIFE INSURANCE COMPANY,
Appellant,
vs.
PHILANDER C. HANFORD AND ORRIN P. CHASE,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR APPELLANT.

P. S. GROSSCUP,
FRANK L. WEAN,
COUNSEL FOR APPELLANT.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1890.

No. 254.

THE UNION MUTUAL LIFE INSURANCE COMPANY, *Appellant*,
vs.
PHILANDER C. HANFORD AND ORRIN P. CHASE, *Appellees*.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR APPELLANT.

I.

STATEMENT.

This case does not involve the construction of the constitution, or of any statute, of either the United States, or of the State of Illinois.

The particular question involved may be stated as follows: Does an agreement between the grantee of real estate, who has assumed a prior mortgage, and the mortgagee, whereby the time for payment of the mortgage debt is extended, without the knowledge or consent of the mortgagor, operate in law, *ipso facto*, and without the intervention of special equities, as a discharge of the mort-

gagor from his obligation upon the debt; or in other words: Does the accession to the debt of a new promissor, through his having purchased the real estate security, and assumed to pay the debt, reduce, by operation of law, the obligation of the original promissor, from that of a principal on the debt to that of a surety only?

On the 9th day of September, 1870, Philander C. Hanford and Orrin P. Chase, the appellees, were the owners of certain real estate in the city of Chicago, upon which, on the last mentioned date, they made their mortgage to Jacob L. Schureman, to secure three promissory notes of the same date, one for the sum of $5,000, payable in one year; one for the sum of $5,000, payable in two years; and one for the sum of $6,000, payable in three years thereafter; the first two bearing interest at 8 per cent., and the latter at 10 per cent. per annum.

The first of these notes was paid, and the two latter were, upon the 30th day of January, 1871, transferred, together with the mortgage securing them, to the Union Mutual Life Insurance Company of Maine, the appellant. (Print. Rec., 13, 14.)

On the 9th of September, 1872, the appellees conveyed the mortgaged premises, by warranty deed, to Lucy Duncan Fake, the deed containing a provision whereby the grantee assumed the payment of the two last mortgage notes, amounting then to $11,000. (Print. Rec., 14.)

The notes remaining unpaid, the appellant, on the 30th day of March, 1878, filed its bill for foreclosure, making the appellees, and Lucy Duncan Fake and her husband Frederick Fake, parties defendant thereto. The bill prayed for a foreclosure, and for a decree for any deficiency that might remain after the application of the proceeds of sale. (Print. Rec., 1–4.)

Lucy Duncan Fake and Frederick Fake, defendants thereto, were defaulted (Print. Rec., 7), and, on the 28th day of May, 1878, the appellees, Hanford and Chase, filed their answer, in effect confessing appellant's right to a foreclosure, but defending against a deficiency decree, for the following reason: That on the 9th day of January, 1875, in consideration of the sum of $340, to the appellant paid by Lucy Duncan Fake, the time of payment of the $5,000 note was extended from its maturity, September 9, 1874, to September 9, 1875, and the time of the payment of the $6,000 note was extended from the time of its maturity, September 9, 1873, to September 9, 1875, without the consent or knowledge of the appellees; that Lucy D. Fake was at the time of the filing of the answer, May 28, 1878, insolvent; and that since the 9th of September, 1874, the mortgaged premises had depreciated in value; wherefore, the appellees said, they were released from personal liability upon the notes. (Print. Rec., 7, 8.)

The case was then referred to a master to take testimony, who, on the 8th of April, 1879, filed a report, finding that there was then due the appellant upon the mortgage notes the sum of $15,569.45, and on account of taxes, etc., the sum of $457.38. Touching the special defense of the appellees to the prayer for a deficiency decree, the master reported:

"And I further report that on the day of the date of the said warranty deed to said Lucy Duncan Fake, to wit: September 9, 1872, said Levi D. Boone 'agt,' received and gave a receipt for one hundred and fifty dollars, as received from Chase, Hanford & Co., for the extension of said note for $5,000, secured by the said first mentioned mortgage to September 9, 1874, and that in a statement of account dated January 9, 1875 (annexed to

this report) occurs the following entry: 'To extension of $5,000 note from September 9, 1874, to September 9, 1875, $100. To extension of $6,000 note from September 9, 1873, to September 9, 1875, $240. And that the value of the premises, included in the said mortgage and warranty deed, is variously estimated by the witnesses who testified herein on that subject, at from fifteen thousand dollars to ten thousand dollars, as the present value thereof, and at two hundred and fifty dollars to two hundred dollars per front foot, and that its value in September, A. D. 1874, was from eighteen to nineteen thousand dollars, and from three hundred to three hundred and twenty-five dollars per front foot."

No exceptions to this report having been filed, a decree was entered on the 10th day of May, 1879, in which it was found that the amount due to appellant from Hanford and Chase and Mrs. Fake was $15,881.67; and a foreclosure sale was ordered, and the master instructed to report what, if any, deficiency remained after the application of the proceeds of the sale. (Print. Rec., 41–44.)

The master, on the 1st day of July, 1879, reported his sale under the decree, and specified the deficiency to be $4,284.95. (Print. Rec., 44–6.)

No exceptions having been filed, the report was, on the 8th day of April, 1880, confirmed. At the same time a personal decree for the deficiency was entered against the appellees, and an execution, as at common law, awarded thereon. (Print. Rec., 48, 49.)

On the 29th of April, 1880, the appellees filed a petition for a rehearing, and on the 6th of July, 1880, an amendment thereto. The petition, as thus amended, alleged the special defense against the deficiency decree contained in their previous answer, viz: the extension of time without their consent; and in addition recited that

the master's report of the amount due did not take into consideration the receipts of rent by E. A. Warfield, a receiver previously appointed by the court—claiming that such rents ought to be applied to the reduction of the decree. (Print. Rec., 49–52.)

Acting upon this petition, and especially with reference to the unadjusted state of the receiver's accounts, the court, on the 27th of October, 1880, set aside and vacated the deficiency decree, with leave to move for another upon the adjustment of the receiver's accounts. (Print. Rec., 53.)

Thereupon the receiver submitted to the master his report, showing, that after the deduction of all expenses, there remained in his hands $16.27. This the master, on the 1st of December, 1880, reported to the court with his approval, except with respect to the amount retained by the receiver for his services, and that paid for attorney's fees, which would, in the aggregate, increase the cash chargeable to the receiver by $49.78. (Print. Rec., 54–56.) To this report no exceptions were filed.

Before the matter could again be called to the attention of the court the receiver's report was lost, and the entire official force of the appellant in Chicago was changed. Warfield, the receiver, was dropped from service and a sworn copy of his last report was not obtained until the 21st day of January, 1886. A few days thereafter, February 2, 1886, the appellant moved again for a personal judgment against the appellees, Hanford and Chase. This motion was subsequently, at the suggestion of the court, and by the consent of the appellees, replaced by a petition filed *nunc pro tunc*, as of the 2d of February, 1886, (Print. Rec., 62). The petition in substance set forth the execution of the notes and mortgage; the assignment of the

mortgage to appellant; the foreclosure decree; the sale thereunder; the amount remaining due after applying the proceeds of the sale; the fact that such sum, with interest to the fifth day of April, 1886, amounted to $6,027; and praying for a deficiency decree against the appellees for that amount. (Print. Rec., 59–61.)

On the 5th day of April, 1886, the court overruled the motion, whereupon the appellant moved for a reference of the case to a master in chancery. (Print. Rec., 61.) Pending its hearing, however, this motion for reference was, on the 28th day of January, 1887, withdrawn, and an appeal taken from the order of the court overruling the prayer for a deficiency decree. (Print. Rec., 62.) The hearing here is upon this appeal.

The jurisdiction of the court to entertain this appeal was challenged by the appellees in their motion to dismiss, entered at the October term, 1887. The motion was argued in printed briefs by both parties, and was, on the 21st day of November, 1887, as we are informed by the clerk, denied.

It appears from the evidence that during the years covered by these transactions, Dr. Levi D. Boone was engaged in doing business in Chicago as a general loan broker, and that among his clients, for whom he acted as a financial agent, was the appellant. He received his compensation in a commission of two per cent. per annum, and was in the habit of charging this commission for negotiating extensions, as well as making new loans. (Print. Rec., 25.)

On the day when the appellees conveyed the mortgage property to Lucy Duncan Fake, September 9, 1872, Mr. Chase, in company with Mr. Fake, called upon Dr. Boone

and informed him of the sale. Mr. Chase on this point, testified as follows:

"I had said to Dr. Boone that we had sold the property to Mr. Fake.

Q. Was anything said about who was to pay the interest of the debt?

A. Yes, sir, that he was to pay the mortgage. Dr. Boone said all right, or something of that sort."

This was the extent of Dr. Boone's participation in the transaction between appellees and Lucy D. Fake.

At the time of this conveyance the appellees paid to Dr. Boone $150 to obtain an extension of time on the $5,000 note, from that date to September 9, 1874, two years. For this Dr. Boone issued to them the following receipt:

"CHICAGO, Sept. 9th, 1872.

Received from Chase, Hanford & Co. $150 for the extension of a note of $5,000, secured by a trust deed or mortgage, dated Sept. 9th, 1870, payable to the order of Jacob L. Schureman and endorsed by him to the Union Mutual Life Insurance Co. Said note is hereby extended to Sept. 9th, 1874." (Print. Rec., 30, also master's report, 14.)

This $5,000 note was not paid, however, when the time to which it was extended had matured, September 9, 1874; neither was the $6,000 note, falling due September 9, 1873.

On the 9th of January, 1875, Dr. Boone made the following statement of the loan:

"Union Mutual Life Insurance Company; L. D. Boone, financial agent, room 13 Boone block, 131 and 133 La Salle St.,

CHICAGO, Jan'y 9th, 1875.

	BALANCE.
623, Chase-Hanford, amt.....	$11,000 00
Int. due on 5,000 at 8% & 6,000 at 10%, Mar. 9, '73.....	500 00
Def'r'd int. on same to date.....	91 67
Int. due Sept. 9, '73.....	500 00
Def'r'd int. on same to date.....	66 67
Int. due March 9, '74.....	500 00
Def'r'd int. on same to date.....	41 67
Int. due Sept. 9, '74.....	500 00
Def'r'd int. on same to date.....	16 67
	$ 2,216 68
To extension of $5,000 note from Sept. 9, 1874, to Sept. 9, 1875.....	100 00
To extension of $6,000 note from Sept. 9, 1873, to Sept. 9, 1875.....	240 00
	$ 2,556 68
By checks January 9th, '75.....	1,500 00
	$ 1,056 68
By checks January 22, '75.....	500 00
	$ 556 68

To this is subjoined the following note:

"*F. L. Fake, Esq.:*

The above is the condition of loan 623 to date, provided you wish the notes extended to Sept. 9, '75.

Resp'tf'y,

L. D. BOONE, *Ag.*"

S. S. B.

According to this statement, no interest had been paid on either note since September 9, 1872. Dr. Boone seems to have been entertaining a proposition to extend the time of payment to September 9, 1875—a period of ten months—but the proposition does not seem to have

been accepted until February 9, 1875, at which time the receipt of $2,000 in payment of interest to September 9, 1874, and $340 as a consideration for the extension of the loan to September 9, 1875, a period of nine months from that date, is acknowledged. (Print. Rec., 35.) No part of the consideration, however, went to the company, it being paid to Boone individually, as brokerage (Print. Rec., 25); and this Fake understood, as well as Dr. Boone. (Print. Rec., 35–6.)

The appellees both testified that they had no knowledge of this last transaction.

It does not appear in the record that there was any depreciation in the value of the property between February 9, 1875, and September 9th of the same year. Henry J. Goodrich estimates its value as follows: September, 1874, $18,000 to $19,000; January 21, *1879*, the day he testified, $15,000. (Print. Rec., 36–38.)

William H. Rice estimated its value in 1873 at $400 a foot, or $20,000, and its value on the 21st of January, *1879* (the day he testified), at $10,000. (Print. Rec., 38–40.)

Neither of these witnesses knew of any sales of property in that neighborhood in either 1873, '74 or '75.

The master made no specific finding of values, his only finding upon that branch of the case being as follows:

"That the value of the premises included in the said mortgage and warranty deed is variously estimated by the witnesses who testified herein on that subject, at from fifteen thousand dollars to ten thousand dollars, as the present value thereof, and at two hundred and fifty dollars to two hundred dollars per front foot, and that its value in September, A. D. 1874, was from eighteen to nineteen thousand dollars, and from three hundred to three hundred and twenty-five dollars per front foot."

The date of this report was April 4, 1879. (Print. Rec., 14.)

There was no further evidence or finding that the mortgage security was diminished in value, or otherwise injured, by the nine months alleged extension, and there was no evidence whatever of a novation of the debt. Some question was made that the motion for a personal judgment was barred by the Statute of Limitations, and that no new personal service had been obtained upon the appellees, but this, we think, cannot be seriously pressed. The single question seriously involved, both in the Circuit court and here, is: Were the appellees discharged from their obligation upon the notes, by the fact of an extension of time to their grantee, without their knowledge or consent. The learned circuit judge filed no opinion, but announced that his decision was based upon the New York rule, as enunciated in *Calvo* v. *Davies*, 73 N. Y., 212.

II.

ERRORS ASSIGNED.

First. The Circuit court erred in overruling the petition, when it ought, on the law and evidence, to have sustained it.

Second. The Circuit court erred in holding that the transaction, alleged to have been an extension of time, discharged the appellees from their obligation upon the notes.

Third. The Circuit court erred in not granting to the appellant a deficiency decree against the appellees, for the amount of the deficiency and interest thereon, less the sum of $49.78, chargeable to the receiver, as found by the master.

III.

POINTS OF LAW AND FACT.

First. The assumption of the debt by Lucy D. Fake did not amount to a novation. The record shows that the appellant, at least, did not so intend it. A novation must be supported by proof of a clear intention upon the part of all the parties to be affected thereby.

Shepherd v. *May*, 115 U. S., 510.

Second. The appellees, being at the inception of the notes the principal debtors, continued, notwithstanding the assumption by Lucy D. Fake, to be personally liable thereon, and the appellant never lost the right to proceed directly upon the personal obligation.

Ober v. *Gallagher*, 93 U. S., 208.

Van Sant v. *Allmon*, 23 Ill., 30.

Colebrooke on Collateral Securities, Sec. 154.

Third. The assumption of the notes by Lucy D. Fake, at most, added only another principal obligor to the debt. It did not change the obligation of the appellees from that of being principal obligors to that of being sureties merely.

Shepherd v. *May*, 115 U. S., 510.

Cucullu v. *Hernandez*, 103 U. S., 116.

Sprigg v. *Bank of Mt. Pleasant*, 10 Pet., 255.

Sprigg v. *Bank of Mt. Pleasant*, 14 Pet., 201.

Corbett v. *Waterman*, 11 Iowa, 86.
Waters v. *Hubbard*, 44 Conn., 340.
Conwell v. *McCowan*, 81 Ill., 285.
Crawford v. *Edwards*, 33 Mich., 360.
Rawson v. *Taylor*, 30 Ohio St., 389.

Fourth. An extension of time for the payment of the indebtedness to one principal debtor does not discharge a co-debtor, who is also a principal, from his obligation upon the debt.

Shepherd v. *May*, 115 U. S., 510.
Cucullu v. *Hernandez*, 103 U. S., 116.
Sprigg v. *Bank*, 10 Pet., 255.
Same, 14 Pet., 201.
Corbett v. *Waterman*, 11 Iowa, 86.
Waters v. *Hubbard*, 44 Conn., 340.
Wilson v. *Foot*, 11 Met., 285.
Draper v. *Weld*, 13 Gray, 580.
Story on Promissory Notes, Sec. 421.
Edwards on Bills and Notes (3d Ed.), Sec. 778.
Daniel Neg. Inst., Vol. 2, Sec. 1297.

Fifth. The extension of time did not cause the appellees any *actual injury*, because:

(*a.*) It did not suspend the right of appellees to pay off the notes at any time during the period covered thereby, and thereupon immediately reach the mortgaged property as an indemnity, or have a right of action upon Lucy D. Fake's promises.

Authorities cited under fourth proposition.

(*b.*) But admitting that the contract for extension had the effect of suspending the appellee's right of indemnity and contribution, no injury can be said to have been caused, unless the appellees, in fact, offered, or were ready, during the period of such suspension, to pay off their obligation.

Sutherland on Damages, Vol. 1, p. 17.

(*c.*) But if there were injury, its extent, at most, would be the depreciation in value of the security between February 9, 1875 (when the contract was made), and September 9, 1875 (when it expired). But no depreciation was shown to have taken place during that period, and none will be presumed.

Aldrich v. *Goodell*, 75 Ill., 452.

Sixth. No new process was needed to bring the appellees into court upon the motion for a deficiency decree; neither was such motion barred by the statute of limitations (ten years).

92d Rule in Equity.

ARGUMENT.

As between the immediate parties to the contract of assumption, there can, probably, be no injustice in the application of the doctrine of a primary and secondary liability. But the error of the New York doctrine consists in so enlarging its application, that the original promissor is clothed with all the rights of a surety, technical as well as others, not only against his co-promisor, but equally against the promisee, who, in no way, was a party to the contract of assumption.

It is manifest that a theory, which thus materially changes the *status* of contract rights, without the consent of the party to be principally affected, is at fault somewhere. The fallacy is chiefly owing, we think, to the failure to keep in separate view, the nature of the legal obligation created by the notes, and the entirely distinctive rights appertaining to the collateral security afforded by the mortgage. The notes expressed the obligation of the makers to pay the sums of money mentioned therein, absolutely. and at all events. They lacked no essential element of a distinctive contract. The mortgage, on the other hand, was a mere security, collateral to such contract. It did not affect the independent vitality of the notes as personal obligations to pay.

When the notes were executed and delivered, the appellees were the only obligors thereon. They could not, therefore, have originally stood in the character of sureties, for there was no principal whose debt they were promising to pay. The nature of this obligation was still unchanged when, on the 30th day of January, 1871,

the appellant became the owner of the notes. Upon the faith of appellees' promise to pay, absolutely and without condition, equally as well as upon the strength of the collateral security, the appellant must be presumed to have parted with its money.

Now, the contention is, that subsequent to this outlay, and without its assent, the appellant has, in some way, lost a portion of its contract right. The promise of the appellees, it is said, is no longer an absolute one. Their obligation is reduced from that of paying the debt *at all events*, to that of paying, *only in the event of another not discharging it.* The holder of the note can, under certain circumstances, be compelled to exhaust the resources of, to him, a stranger, before he can look to the one upon whose credit, and for whose benefit, the money was advanced. The maker is no longer bound to the extent of the terms and nature of his original promise, but has, by an outside act, become entitled to the technical exemptions of one who had been, from the beginning, only a surety.

The proposition that contract obligations can thus be discharged, by means of an outside contract, to which the obligee was a stranger, is at the least, a striking one. We must find its support, if any, in a showing of reasons strong enough to justify the abrogation of a contract, independently of, and contrary to, the consent of the parties.

THERE WAS NO NOVATION OF THE DEBT.

A contract is not novated, nor the obligation of the parties thereon changed, unless it is plain that such was the clear intention of all of the parties affected thereby. *Shepherd* v. *May*, 115 U. S., 510. The bringing in of a

new promisor will not, *ipso facto*, extend, reduce, or otherwise vary the terms of the contract.

Now the proof shows that appellant had no part in the conveyance of the mortgage property to Mrs. Fake, or her assumption of the notes. Dr. Boone was told about that time that the property had been sold to Mr. Fake, and that he was to pay the mortgage, but that was the extent of the conference. (Print. Rec., 30.) Dr. Boone was not asked, and did not volunteer to discharge the appellees, from their obligation, or change its nature or extent. Indeed, on the occasion when this knowledge came to him, the *appellees* paid $150 for an extension of one of the notes to a date two years subsequent. (Print Rec., 30.)

The fact that Dr. Boone afterwards received interest from Mrs. Fake, and extended to her the time for payment of the notes, did not constitute a novation of the debt. *Shepherd* v. *May*, *supra*. These acts evinced no intention to release the appellees, and are not inconsistent with the continuance of their full original liability. The appellant, unquestionably, did not lose its contract rights against either obligor, simply because it received interest from one of them. Neither did an extension of time, within which one obligor would be called upon to pay the note, of itself, affect the right to enforce the liability against the other.

Story on Bills and Notes, Sec. 421.

There was, therefore, no express assent to a novation, and no conduct, from which such an intention could be implied.

THE APPELLEES, BEING AT THE INCEPTION OF THE NOTES THE PRINCIPAL DEBTORS, CONTINUED, NOTWITHSTANDING THE ASSUMPTION BY LUCY D. FAKE, TO BE PERSONALLY LIABLE THEREON, AND THE APPELLANT NEVER LOST ITS RIGHT TO PROCEED DIRECTLY UPON THE PERSONAL OBLIGATION.

As the holder of the notes and mortgage security, the appellant could, at any time after maturity, have sued upon the notes in a court of law, or have proceeded by foreclosure in a court of equity, or both. It was entitled to all these remedies concurrently, up to the time of an actual satisfaction of its debt.

Ober v. *Gallagher*, 93 U. S., 208.
Colebrooke on Collateral Securities, Sec. 154.
Van Sant v. *Allmon*, 23 Ill., 33.

Even a release of the mortgage, or the dismissal of a foreclosure suit brought thereon, would not affect the notes as the binding personal obligations of the maker. Notwithstanding such release, or dismissal, the obligations upon the notes would have remained. *Edgington* v. *Hefner*, 81 Ill., 341.

These admitted principles can have a fixed basis only in the legal fact that the obligation inherent in the notes, and the rights and duties growing out of the mortgage security, are distinct and separate legal relationships. The obligation of the makers is to be found in the notes. The treatment of the collateral, though it may give rise to a counter-claim to the extent of the injury inflicted, does not affect the *obligation created by the notes.* It therefore follows:

THAT THE ASSUMPTION OF THE NOTES BY LUCY D. FAKE, AT MOST, ONLY ADDED ANOTHER PRINCIPAL OBLIGOR TO THE DEBT. IT DID NOT CHANGE THE OBLIGATION OF THE APPELLEES FROM THAT OF PRINCIPAL OBLIGORS, TO THAT OF SURETIES ONLY.

The contract of a surety is very different, both in its scope and consequences, from that of a principal. The surety undertakes to pay the debt of another; the principal obligates himself to pay a debt that is his own. The surety, though bound by the letter of his contract, is, by reason of the fact that his obligation is wholly for the benefit of another, entitled to a strict construction of the contract; the courts will not employ a strict construction to work out the immunity or discharge of the principal. A surety can impose upon the creditor the burden of diligence, even to the extent of expense; he can make it the creditor's business to see that the debt is paid. A principal cannot impose upon the creditor such diligence or expense; it is the principal's business to pay the debt. These, and other distinctions in the nature of the obligations, make it a matter of serious moment to the holder, whether the maker stand upon the obligation as his own, or merely as surety to some one else.

The furthest inroad upon this position of the creditor, is the rule of law that one ostensibly a principal may, by parol, show that he was in fact a surety only. But this rule escapes the well known maxim, that the terms of a written contract shall not be varied by parol, only upon the presumption that the payee must have originally accepted his obligations as that of a surety only. It does not permit an original principal obligor to show that, by subsequent contract or events, the nature and extent of his obligation have been changed.

The courts have always recognized the obligation of a principal as different from, and more valuable than, the obligation of a surety. In *Sprigg* v. *Bank of Mount Pleasant*, 14 Peters, 201, this court declined to permit one who had bound himself, "as principal obligor," to show that, in fact, he was only a surety, saying (page 206):

"They had undoubtedly a right to waive their character and legal protection as sureties, and assume the character of principals. This admission in the obligation must have been for some purpose; and none can be reasonably assigned, except that it was intended to place all the obligors upon the same footing with respect to their liability to the bank."

How then can appellees, unquestionably contracted with upon the strength of their being principal obligors, reduce or change their obligation, by an act in which the appellant had no part? Can they thus deprive the holder of a valuable contract right? If so, what limit is to be put on this compulsory re-writing of the contract. And by what precaution *can* a creditor prevent the paring down of the obligation, upon the faith of which, as it originally stood, he advanced his money.

The conclusion arrived at in *Calvo* v. *Davies*, 73 N. Y., 212, is, unquestionably, as far reaching as was claimed by the Circuit court. It goes to the full extent of changing, without the holder's consent, the legal obligation created by the bond. Davies, who had executed to Calvo his bond, together with a mortgage on real estate securing the same, conveyed the mortgaged premises to one Leslie, who assumed to pay the debt. Subsequently Calvo and Leslie, without the consent of Davies, entered into an agreement, whereby the time for payment of the bond was extended. The conclusion of the court was, that this extension of time *discharged Davies from his obligation upon the bond.*

This conclusion, plainly, is not reached through the application of legal principles, or analysis, but wholly, as the court say, upon an interpretation of the previous New York authorities. The opinion admits that the right of the mortgagee to resort to the bond was not affected or impaired by the assumption; that the mortgagor could not, by any dealing or contract with Leslie, change the right of the creditor in respect thereto, and then affirms that "the "mortgagee, after the conveyance by Davies, could not "deal with the grantee of the equity of redemption to "the prejudice of his right of subrogation, without dis- "charging Davies from liability for the debt, either wholly "or *pro tanto*." In illustration of this it continues: "If, "for example, he had, pursuant to an agreement with "Leslie, without the consent of Davies, satisfied or re- "leased the lien of the mortgage, it is plain that he would "thereby, as to Davies, have discharged the debt, at least, "to the extent of the value of the land."

Now the legal principle introduced in the illustration, if it be taken as a recital merely of such wrongful treatment of collateral securities as ought, equitably, to reduce the mortgagor's liability to the extent of the loss incurred, has no relation to the personal obligation of the mortgagor upon the bond. But losing sight of the distinctiveness of these legal relationships, the opinion abruptly veers off to the merely dogmatic statement, that upon the *authorities*, the rights of the parties are to be determined by the rules governing the relation of principal and surety. The decision, it seems to us, is of weight only as interpreting the previous New York cases, and gives this court little, if any light, upon the *rationale* of the question involved.

The question, however, is not a new one in this court.

In *Sprigg* v. *Bank of Mt. Pleasant*, 10 Peters, 257, and also 14 Peters, 201, this court expressly held that neither in law, nor in equity, was the maker of a note discharged by an extension of time to his co-obligor, where his liability was originally that of a principal.

A still later case is *Shepherd* v. *May*, *supra*, which grew out of a loan of $10,000, made by May to Shepherd, and evidenced by a note for that amount, secured by a mortgage upon property in Washington. Before the maturity of the note Shepherd sold the property to Walker, subject to the mortgage. The interest on the note was paid by Shepherd until the time of the sale to Walker, after which it was paid by Walker, until the maturity of the note. At this last date, May extended the time of its payment for one year, upon Walker's agreement to pay interest thereon, at the rate specified therein. At the end of the year a further extension of time for nine months was made, upon the same consideration. Shepherd contended that Walker, by accepting the debt, assumed to pay the note; that thereafter, by operation of law, Walker stood as principal, and Shepherd as surety only upon the note; and that the extension of time, made without his consent, discharged him from his obligation thereon.

This court, however, ruled against this contention, for the reason, among others, that such an act of assumption did not, in legal effect, reduce Shepherd's obligation from that of a principal to that of a surety. Through Mr. Justice Woods the court say (p. 511):

"And if Walker had expressly promised May to pay the debt, that would not, without the assent of May, have converted Shepherd from a principal debtor into a surety merely. *Cuculu* v. *Hernandez*, 103 U. S., 105; *Rey* v. *Simpson*, 22 How., 341.

"The only way in which Walker could become the principal debtor of May, and Shepherd the surety, was by the mutual agreement of all three. There is no proof of any such agreement. It follows that as the relation of principal and surety did not exist between Walker and Shepherd, the latter was not discharged from his liability to May by the contract of May with Walker to extend the time of payment of the money due on Shepherd's note."

In *Cuculu* v. *Hernandez*, 103 U. S., 105, it appeared that Cuculu made and delivered his note to one Villavaso for $10,000, securing the same by a mortgage upon a plantation. Subsequently, Cuculu conveyed the plantation to one Walker, Walker expressly assuming to pay the mortgage note above mentioned. After this Villavaso and Walker entered into an agreement, by the terms of which the time of payment of the note was extended.

Among other things the complainant contended that Cuculu was released by this extension of time. This contention, and the comments of this court through Mr. Justice Woods thereon, is embraced in the following quotation from the opinion:

"*Fifthly*. The complainant claims that the notes given by Cucullu to Villavaso were novated, and that Cucullu was released by the extension of the time for their payment, granted by Walker to Villavaso by the act of February 4, 1858. This claim is based on article 3063 of the Civil Code, which declares: 'The prolongation of the time granted to the principal debtor, without the consent of the surety, operates a discharge of the latter.' To make this article applicable it must appear that by the act of Feb. 4, 1858, by which Walker agreed with Cucullu to pay the notes executed by the latter to Villavaso, Walker became the principal debtor and Cucullu the surety. It cannot, we think, be reasonably claimed that a debtor is converted into a surety by his creditor's acceptance of an additional

promise from a third person to pay the debt due him by his debtor. There is no element of suretyship in such a contract unless it be that the additional debtor might be regarded as surety for the original debtor. The relation between the creditor and original debtor is not changed by such an arrangement." (p. 115.)

From a dictum in *Conwell* v. *McCowan*, 81 Ill., 285, it is clear that the Supreme court of Illinois, where the case at bar arose, entertain the same view as that expressed in the decisions above mentioned. Conwell and McCowan had been partners, and upon the dissolution of the firm were indebted to Thompson upon a certain note which, by the terms of the dissolution, Conwell assumed to pay. Alluding to the character of this agreement the court, through Chief Justice SCOTT, say:

"As between Thompson and the makers, McCowan and Conwell, they were both principals on the note, but Conwell having assumed to pay the debt, as between themselves McCowan was a mere surety for Conwell."

The precise question at bar has been under the consideration of the Supreme courts of Iowa and Connecticut. In both states the views expressed in the opinion of this court were anticipated.

In *Corbett* v. *Waterman*, 11 Iowa, 86, the material facts were that Waterman had executed two notes to the complainant Corbet, and secured them by mortgage. After one of the notes was paid Waterman sold the mortgaged premises to Hopkins, the deed reciting that Hopkins was to pay the notes. Thereafter the complainant, in writing, in consideration of one dollar, agreed with Hopkins to extend the time on the mortgage made by Waterman; the agreement also containing a stipulation for a higher rate of interest. At the time that the Waterman note and mortgage matured, the mortgaged premises were

sufficient to pay the debt, and Hopkins was solvent, but within six months thereafter, Hopkins became insolvent, and the mortgaged premises so depreciated as to be insufficient to pay the note. The court below decreed a foreclosure of the mortgage, gave a general execution against Hopkins only, and dismissed the bill as against Waterman, except as to certain costs. Upon an appeal by complainant, the Supreme court reversed the decree.

WRIGHT, J. after stating that *as between the vendor and the vendee*, the vendor was a surety with respect to the mortgage debt, says:

"The correctness of this rule is conceded by both parties in this controversy, but it is claimed by the appellant that while as between the vendor the purchaser such vendor is a surety, the relation of the vendor to the mortgagee remains unchanged. As a rule this proposition is correct, and the only question therefore is, what effect the agreement of complainant with the purchaser shall have upon the rights of the vendor and mortgagor. While in equity, as between the parties to the deed, the vendor is regarded as the surety, and the vendee as the principal debtor, the mortgagee may treat them both as principal debtors, as to him, and have a personal decree against either or both. And until he has done some act, or it in some manner sufficiently appears that he recognizes the purchaser or vendee as the principal, and the original mortgagor as surety merely, both of them will, as to such mortgagee, be treated as principals."

In the case of *Waters* v. *Hubbard*, 44 Conn., 340, the material facts were that Hubbard had made his note to Waters and secured the same by mortgage, and subsequently sold a portion of the mortgaged premises to one Wells, Wells assuming to pay the entire debt. Thereafter Wells executed to Waters a mortgage upon the lots he purchased from Hubbard, to secure the debt assumed by him, being the entire debt due from Hubbard

to Waters, this last mortgage reciting that Wells had assumed and agreed to pay the notes made by Hubbard to Waters. A foreclosure having been decreed, both as to the mortgage made by Wells, and also the prior mortgage upon the unconveyed lots made by Hubbard, Hubbard assigned error in the Supreme court, and insisted, "that the court ought to have decided, that after the "contract between Hubbard and Wells, by which Wells "agreed to pay the debt to Waters, his relation to that "debt was that of a surety, and that he was discharged "from the payment of the same by the contract stated "in the petition."

The court overruled this assignment of error. CARPENTER J., giving the opinion of the court, says:

"The second and third errors assigned are in substance the same—that by the contract between Hubbard and Wells by which Wells assumed and agreed to pay the debt to the petitioner, Hubbard's relation to that debt became that of a surety, and that he was discharged from the payment of the same by the contract made between Wells and the petitioner, by which Wells gave and the petitioner accepted the third mortgage. * * * We think there was no error in this. Whatever may have been the relation which Hubbard and Wells sustained as between themselves, as against the petitioner, it is obvious that the relation of Hubbard to the mortgagee was not changed. He remained the principal debtor still. There was no novation."

But if the assumption of the note by Lucy D. Fake did not change the appellee's obligation from that of a principal debtor, it follows that an extension of time, though granted to Mrs. Fake without the appellee's consent, did not operate in law to discharge them from their obligation upon the notes, for:

THE EXTENSION OF TIME FOR THE PAYMET OF THE INDEBTEDNESS TO ONE PRINCIPAL DEBTOR, DOES NOT DISCHARGE A CO-DEBTOR, WHO IS ALSO A PRINCIPAL, FROM HIS OBLIGATION UPON THE DEBT.

This proposition is expressly affirmed in the three cases above mentioned, decided by this court, and also in the cases decided by the Supreme courts of Iowa and Connecticut.

It is also in harmony with the most reasonable view of the subject. An extension of time, without his consent, discharges a surety, because his undertaking simply is to stand good for the debt of the principal at its maturity. He has received no benefit from the note, and is under no obligation, either legal or moral, to pay, except as has been expressly agreed. Now, the length of time during which he will stand good for the debt is, to him, a material consideration. He may be willing to imperil his property, to accommodate another, for a year, but be wholly unwilling to do the same thing for a longer period. The date of maturity is of the very essence of his contract. If, therefore, the creditor, without his consent, changes that date, he has to that degree, changed the contract. The *identity* of the obligation to which the surety acceded has, by that act, been destroyed. When the creditor, by a valid agreement with the debtor, extends the time of performance from a shorter to a longer period, he supersedes the old obligation by a new, and cannot enforce payment until the longer period has elapsed. If the surety is sued upon the old agreement, to which alone his undertaking was accessory, he has only to show that *that* has ceased to exist, and no longer binds his principal; and if he is sued upon the substituted agreement, he is entitled, both

at law and in equity, to make the short and conclusive answer—*non haec in foedera veni.*

But no such reason for the rule applies to the principal debtor himself. His obligation is to pay the whole debt, unconditionally. If a co-obligor obtains further time, his obligation to pay the whole debt is not thereby affected. He is still at liberty to discharge it at once. Until he so discharges it, he is in default. He can suffer no damage, by simply not being *compelled* to do promptly what his obligation required.

Justice STORY sums up the law on this subject in the following paragraph:

"The question may also arise whether the giving of time by the holder to one joint maker or indorser will discharge the other joint parties to the bill. Upon the same principle as that which is applied to the case when the holder covenants not to sue one joint contractor it would not be a discharge, for it is a mere personal contract with him, for the breach of which a remedy may lie by him alone, but it will not be equivalent to a release."

Story on Promissory Notes, 7th Edition, Sec. 421.

WERE THE APPELLEES INJURED?

It may be admitted that after the assumption by Mrs. Fake, the mortgaged property was, as between her and the appellees, the primary fund for the payment of the debt. The appellees were, upon the payment of the obligation, either voluntarily or by compulsion, entitled to a subjection of the mortgage premises to the purposes of indemnity. This would be a necessary sequence of their contract with Mrs. Fake, as well as an equity that a court of chancery would work out.

Now, if, as in the case of a surety, their obligation were, by the extension of time annihilated and gone, their discharge, irrespective of any question of actual injury or damages, would necessarily be entire and complete. This is the theory upon which the Circuit court proceeded. But we have shown that there is no such discharge from the original obligation. The injury, if any, by the act of the creditor, is in respect only to the *means* of satisfying the debt, or re-imbursing themselves after making payment. Their rights, growing out of this injury, are creations of equity, administered in a court of equity, and upon the equitable principle of making good the loss, but never inflicting a penalty. The maximum right would be to have deducted from the debt, an amount equal to the injury, *and no more.* The real question, therefore, is: Have the appellees shown themselves to have suffered injury by reason of the extension of time complained of, and if so, to what extent?

It is well to bear in mind that appellant is nowhere, in this case, charged with having wilfully or negligently lost the benefit of a collateral security. It appears, on the contrary, that the nine months' indulgence was accompanied with the payment of $2,000 upon the arrears of interest then due. (Print. Rec., 35.) It is very probable that the time given, in a large measure, induced Mrs. Fake to make this payment. The appellees have to that extent been benefited rather than injured.

No reasons, *apparent at that time*, have been shown why an immediate foreclosure should have been made. The panic of 1873 had already swept the country. It was now February, 1875. The real estate market had fallen into dulless. No sales, reflecting the value of this propnrty, had been made for over a year. No man knew that the full

depths of depreciation had not already been reached. A large part of the community, at least, believed that the receding wave had already reached its ebb. It is of no moment, of course, whether such belief was, or was not, justified by subsequent events. The superior wisdom of after-sight has, in this case, no right to reflect either upon the motive, or the carefulness, of the foresight. If any injury was caused by the delay it was done innocently, and in pursuance, doubtless, of Dr. Boone's best judgment respecting the interest of both the debtors and the creditor.

Did the extension of time cause the appellees any injury? The answer, it seems to us, is clearly in the negative. The fact that they are now called upon to pay a portion of the debt is, alone, no proof of injury. They were liable to this at all times, irrespective of Mrs. Fake's place upon the obligation, or of the collateral mortgage security. The only theory upon which injury, as an effect of the extension, can be predicated, is that such extension deprived them of the right, during the time covered, of paying the debt and having immediate recourse upon the primary fund, and upon Mrs. Fake's personal agreement. But this theory is inapplicable, for the following reasons:

(*a.*) *The alleged extension did not suspend the right of appellees to pay off the notes at any time, during the period covered thereby, and thereupon immediately reach the mortgaged property as an indemnity, or have a right of action upon Mrs. Fake's promises.*

This propostion is a necessary corollary to the one already discussed, to wit: that the extension of time for the payment of indebtedness to one principal debtor does not discharge the co-debtor. What was the right of the obligor who was not a party to the contract for exten-

sion? Possibly if the creditor had brought suit against him within the period covered, advantage could have been taken of the contract, and the action abated. But he certainly was not compelled to take the benefit of the extension. His want of participation in the contract left him the option to treat the indebtedness as if it matured according to its original terms. He could, by a tender, have forced the creditor to have accepted payment then. Now if this was his right, with respect to the creditor, it was also his right with respect to the co-obligor. Not having assented to the extension he was not hindred in the enforcement of his legal demands upon either. He had a right to pay the debt, as it originally stood, independently of the unassented to contract. He had an equal right, upon such lawful payment, to enforce his rights, either of indemnity or contribution. Otherwise the creditor, and his co-debtor might, by extensions, indefinitely prolong the suspension of his rights.

Unless therefore an extension of time discharges the unconsenting obligor altogether, it does not suspend, for a moment, his rights of indemnity or contribution, against the co-obligor. But we have seen, by the adjudications, that both in law and equity he is not discharged; therefore his full right of indemnity upon the payment of the debt could not have been suspended or otherwise affected.

There is no necessary inconsistency or injustice in this interpretation of the law. It is true that the obligor, who procures the extension might, after paying the considertion, be forced nevertheless to lose the practical benefit of the contract, in the proceedings taken against him by his co-obligor. But that is a risk he could have avoided by ascertaining, in advance, if the co-obligor would consent. The ascertainment of such consent is not a burden

that ought to be thrown upon the creditor. The latter may have no means of knowing but what the request of the obligor expressed the wish of his co-obligor. By his contract for extension he bars himself from enforcing payment from either until the time has expired. It was no part of his duty, to ascertain if the co-obligors will avail themselves of this privilege. The natural presumption is that they will; whatever they do, however, the creditor had put it beyond *his* power to enforce an earlier collection of the debt. This, equitably, is a consideration for the advantage received.

It would have been Mrs. Fake's fault if, through her co-obligors dissent, her contract had proved fruitless. Will the law inflict a penalty upon the creditor for agreeing, in good faith, to extend a forbearance, simply because it turns out afterwards that the request therefor did not express the wish of *all* the obligors. Was not the right to prevent the appellant from enforcing, within a certain period, the collection of its debt, valuable and distinctive enough to be made the subject-matter of a contract, even though there existed the collateral contingency of the co-obligors voluntarily paying the debt when by its original terms it matured? If so the acceptance of such voluntary tender is not an act inconsistent with the character of its contract, or inflicting injustice upon any party thereto. The possible refusal of the co-obligor to accept the benefit of the contract was a contingency necessarily contemplated, and in no sense, therefore, inconsistent with the understanding of the parties.

(*b*). *But, admitting that the contract for extension had the effect of suspending the appellees' right of indemnity and contribution, no injury can be said to have been caused, unless the appellees,* IN FACT, *offered, or were ready, during the period of such suspension, to pay off their obligation.*

The record affirmatively shows that no such offer was made. (Cross-examination of Hanford, Print. Rec., 24.) Neither appellee has testified to any readiness, willingness, or wish to pay off the debt during the nine months in question. On the contrary, they both relied entirely upon Mrs. Fake paying it. They suffered, therefore, no actual injury, but at most only, that technical injury, which theoretically attaches to the violation of a right.

But these appellees are in effect asking a court of equity to relieve them from a purely legal obligation. The relief is in the nature of damages for an unauthorized treatment of collateral security. Now, equity takes jurisdiction of damages, incidentally only, and then simply to do exact justice. It is no part of its office to *vindicate* legal rights by the awarding of nominal damages. In equity, therefore, such a thing as technical injury is unknown. That fiction, and the purpose of its existence, is confined to courts of law, where, in the necessity of determining and establishing rights, the reason of its use alone applies. Equity, when it enters the field of damages at all, awards *compensation* only, and it is a universal and cardinal principle of compensation, even at law, "that the person injured shall receive compensation com-"mensurate with the loss or injury, and no more." (Sutherland on Damages, Vol. 1, p. 17).

Now, if the appellees did not wish, during the period, to pay off the debt, the only condition upon which actual injury was at all dependent never happened. The extension *might* have injured them, but *did* not. How can equity fix the measure of a possible loss which never occurred?

(*c.*) *But if there were injury, its extent, at most, would be the depreciation in value of the security between February 9, 1875, and September 9th of the same year.*

No depreciation during that period is shown to have existed. The report of the master (Print. Rec., 14), shows the value fixed by witnesses as of September, 1874, and as of April 4, 1879, the intervening period being four years and seven months. Of the two witnesses called upon value, one, Mr. Goodrich (Print. Rec., 36–38), estimates the value as of September, 1874, and as of the day he testified, January 21, 1879; the other, Mr. Rice (Print. Rec., 38–40), fixes the value as of 1873, and as of the day he testified, January 21, 1879. In both cases a period of at least four years and three months intervened between the dates of comparison.

Now the time covered by the contract was from February 9, 1875, to September 9th of the same year—a period of but nine months. The testimony does not show what proportion, if any, of depreciation occurred in this much smaller interval. How can the court, by simply knowing the range and direction of fluctuations between two periods four years and a quarter apart, know therefrom, also, what was the range and direction of fluctuations between inter-dates but nine months apart? Possibly the bottom had been reached in February, 1875, and prices thereafter were on the ascendant. Possibly the summer

season of 1875 was one of stand-still, followed later in the fall, or a year or two later, by renewed depreciation. Possibly the spring of 1875 witnessed a little upward turn in the tendency of prices, so that property was more valuable in September than in the preceding February. These are conjectures or possibilities, that no court merely *guessing* at values could exclude; and there is no evidence in this record which enables the court to do better than indulge a pure guess.

Again we insist, that equity does not inflict penalties. Its purpose is accomplished when it has made good the loss. But how can the court make good the loss until it is informed what the loss actually is? The Circuit court, in the case at bar, was not advised of any loss. It was furnished with no data upon which a finding of depreciation between February 9th and September 9, 1875, could be predicated. It had no proof that there was *any* depreciation within that period at all. Indeed, the Circuit court, following the doctrine of *Calvo* v. *Davies*, was confessedly indifferent about actual injury, or its extent; for the doctrine adopted discharged the appellees, even though the property had actually appreciated in value.

It is supererogatory to cite cases in support of the proposition we are discussing, but by the indulgence of the court we will refer to one *Aldrich* v. *Goodell*, 75 Ill., 452, chiefly because it was in the Supreme court of the state in which this cause of action arose.

In that case it appeared that Aldrich had purchased of one Matteson the furniture of a hotel, in payment for which he gave his four notes, three for $1,829.90 each, and one for $2,000. The furniture was subsequently sold to Blakesly & Cummings, who assumed to pay, among others, the $2,000 note above mentioned. Blakesly &

Cummings, also, in further payment, transferred to Aldrich two notes of $1,421.90 each, executed by James M. & A. K. Cory, and secured by mortgage upon real estate. These last mentioned, or "Cory" notes, were given by Aldrich to Matteson as collateral security to the $2,000 note.

At the time of this transfer a settlement was had between Aldrich and Matteson, in which it was found that the former was indebted to the latter, over and above the notes assumed by Blakesly & Cummings, in the sum of $1,012.60, for which Aldrich gave his two notes of $506.30, each secured by a mortgage. The two last notes and the mortgage security were, after maturity, tranferred to Goodell, and their foreclosure was the subject-matter of the suit.

Aldrich, among other defenses, contended that Matteson had, through negligence, failed to get the benefit of the two Cory notes, transferred to him as collateral security, on account of which he was entitled to a reduction of the debt to the extent of such collateral lost. If this defense were good it would have applied as well to Goodell, who was a purchaser after maturity. The reason given for not taking proceedings upon the collateral mortgage was the alleged existence of a prior mortgage. Objection to this, however, was made, on the ground both of the insufficiency of the proof and of the validity of the prior foreclosure claimed. The court, through Mr. Justice Sheldon, passed over this objection, and comes to the direct question of *actual injury*, as follows (page 457):

"We deem it unnecessary to discuss the question of this proof for the reason that, admitting the force of the objection and laying out of view a prior mortgage, we

see no ground of liability for not foreclosing the Cory mortgage, because it has not been shown that any damage resulted therefrom. For neglect to foreclose that mortgage there would be a liability only for the damages caused by such neglect. None here appear."

We submit, then, that upon any view of this case, except an absolute obedience to the New York doctrine, the appellees have shown no defense relieving them of their obligation upon the notes. In following that doctrine, the Circuit court has erred, and its consequent judgment ought, we respectfully submit, to be reversed.

NO NEW PROCESS WAS NEEDED TO BRING APPELLEES INTO COURT UPON THE MOTION FOR A DEFICIENCY DECREE; NEITHER WAS SUCH MOTION BARRED BY THE STATUTE OF LIMITATION (ten years).

The two notes upon which the deficiency decree was based, by their original terms, matured as follows: the $5,000 note September 9, 1874, and the $6,000 note September 9, 1873; but the maturity of this latter note was, by a contract between the *appellees* and the appellant, extended to the 9th day of September, 1874. (Answer of appellees, Print. Rec., 8.) Hence, upon any theory of this case, the statute of limitations did not begin to run until the 9th of September, 1874.

The bill prayed for foreclosure and a deficiency dercee, and was filed on the 30th day of March, 1878, or within four years after the maturity of the notes. (Print. Rec., 1.) The appellees entered their appearance, and filed a joint answer, defending specially against the prayer for a deficiency decree. (Print. Rec., 7.)

The decree for forclosure provided that, "if the price "for which said premises shall be sold shall be insufficient

"to satisfy the amounts so found and adjudged to be due "the complainant, with interest thereon, and costs of suit "and expenses of sale aforesaid, that the said master specify "the said amount of deficiency in his report of sale." (Print. Rec., 43.) In pursuance of this the master reported the amount of deficiency (Print. Rec., 46); thereupon the court confirmed the sale, and entered a personal decree against appellees for the amount of the deficiency. (Print. Rec., 48, 49.)

A petition for a rehearing, on that portion of the decree entering judgment for the deficiency, having been filed by both of the appellees (Print. Rec., 49–50 and 51–52), the court ordered that the personal judgment be set aside "with leave to appellant to move for a deficiency decree upon the adjustment of the receiver's accounts." When such adjustment was finally completed, the appellant, in pursuance of this leave, renewed its motion February 2, 1886, for deficiency decree. Thereupon the parties appeared by their solicitors and an argument was had (First order, Print. Rec., 61), upon consideration of which the motion was overruled. (Print. Rec., 61.) Subsequently a petition was, by the consent of the appellees through their attorney, filed *nunc pro tunc*, as a substitute for the motion, and the case was appealed to this court. (Print. Rec., 62.)

The 92d rule in equity authorized the joinder in one cause of action of the remedies of foreclosure, and a personal judgment for the deficiency. Under this rule the appellant proceeded. The appellees became parties, both by the service of summons, and by their appearance, answer and testimony. They comprehended the effect of such joinder, too, for their defense was directed against the phase of the action looking to a deficiency decree. When this

proved at first unsuccessful, they filed a petition for a rehearing and obtained the vacation of the order. But such vacation did not amount to a dismissal. It reserved the right to renew the application for a deficiency, *by motion*, when the receiver's account was adjusted. Such an order could not have contemplated the dismissal of the old suit, or the renewal of appellant's remedy by a *new* suit. When the account was adjusted and the motion for a judgment renewed, the appellees *appeared* in court to test the merits of the motion, and this time successfully. It is thus seen that the action was, and was understood to have been, a continuous one. From its commencement the statute of limitation did not run, and no new process was needed. The 92d rule was intended to help both creditor and debtor, by the avoidance of the expense and annoyance of a multiplicity of suits; but if open to the construction here contended for, it has proved to this appellant a stumbling block and a snare.

The case of *Mulvey* v. *Carpenter*, 78 Ill., 580, cited by counsel in the court below, is not in point. In that case the decree for sale found facts which, in effect, discharged Tompkins from liability for a personal decree. A sale occurred and was confirmed, without embracing any personal judgment upon the deficiency. Four years later, *without notice to Tompkins*, a deficiency decree was formally entered up. The court found that the foreclosure suit was, upon the entry of the decree confirming the master's report, without allusion to a personal judgment, practically ended, and that without actual notice to Tompkins, thus giving him a chance to defend, a further order, made four years later, would, in effect, be *a fraud upon him.*

In the case at bar none of these conditions exist. The case was purposely retained upon the docket for the purpose of adjusting the receiver's report, and when this was done, and the motion was renewed, the appellees, by their solicitors, the ones now defending against this appeal, came into court and made resistance upon the merits of the motion. No new plea or answer to our motion or petition was filed. The appellees relied on the defenses set up in their original petition for rehearing. The motion was considered by everybody as a motion in the original cause. Neither the want of personal service, nor the statute of limitations, was by any pleading relied upon as a defense, or brought to the attention of the court.

Respectfully submitted,

P. S. GROSSCUP,
FRANK L. WEAN,
Counsel for Appellant.

Office Supreme Court U. S.
FILED,
MAR 25 1891
JAMES. H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

THE UNION MUTUAL LIFE INSURANCE COMPANY,
APPELLANT,
vs.
PHILANDER C. HANFORD AND ORRIN P. CHASE,
APPELLEES.

No. 254.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR APPELLEES.

WALTER H. SMITH,
J. H. McGOWAN,
for Appellees.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1891.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

THE UNION MUTUAL LIFE INSURANCE COMPANY, APPELLANT,

v.

PHILANDER C. HANFORD AND ORRIN P. CHASE, APPELLEES.

No. 254.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Brief for Appellees.

THE CASE.

September 9, 1870, the appellees, Hanford and Chase, mortgaged certain real estate in the city of Chicago, to secure three promissory notes, given to Jacob L. Schureman, of that date; one for $5,000, payable in one year; one for $5,000, payable in two years, and one for $6,000, payable in three years from date. The first two drew interest at 8 per cent. per annum and the last one at 10 per cent. per annum.

The first note was paid. The other two were, on the

30th of January, 1871, transferred to the Union Mutual Life Insurance Company, appellant, together with the mortgage securing the same.

The interest was paid on both up to September 9, 1872.

Hanford and Chase conveyed the premises on the 9th of September, 1872, to one Lucy D. Fake, by a warranty deed, which deed contained an express provision that the said Lucy D. Fake should assume the payment of said two notes. (Record, 21.)

This transfer to Fake and its terms were known to the Insurance Company at the time it was made. It was made in its office in the presence of its agent. (Record, 24, 26, 30.)

Some time in January, 1875, both notes being past due and unpaid, with interest from September 9, 1872, Lucy D. Fake, without the knowledge or consent of Hanford or Chase, entered into an agreement with the Insurance Company by which the Company agreed to extend the time of payment of both of said notes, in consideration of the payment of $100 on the $5,000 note, and $240 on the $6,000 note. This sum was then paid, and also all the interest on both notes up to that date. (Record, 33, 35.)

On the 30th of March, 1878, the Insurance Company filed its bill against Hanford, Chase, Lucy D. Fake, and Frederick Fake, to foreclose said mortgage.

Lucy and her husband did not answer and were defaulted. Hanford and Chase, May 28, 1878, answered, confessing complainant's right to foreclose, but insisting that they were not liable for any deficiency, by reason of the extension of time above set forth, and alleging that Lucy D. Fake had become insolvent, and that the mortgaged premises had greatly decreased in value during the time of extension.

The case was referred to a Master, and on May,10, 1879,

a decree was rendered in which it was found that Hanford and Chase and Lucy D. Fake were indebted on the notes in the sum of $15,881.67, and a sale of the premises was ordered to be made by the Master.

A sale was made on the 25th day of June, 1879, and the Insurance Company became the purchaser. The premises sold for $12,000, and the Master reported a deficiency of $4,284.95 (Record, 46.) April 8, 1880, the court entered a deficiency decree against Hanford and Chase for $4,248.65. (Record, 49.)

Afterwards, upon petition filed by Hanford and Chase, the Court, on the 27th of October, 1880, set aside and vacated said deficiency decree. (Record, 53.)

The Insurance Company filed a motion April 5, 1886, and afterwards, January 26, 1887, a petition for a deficiency decree against Hanford and Chase, and served notice of the motion on their attorney. No notice was given to Lucy D. Fake. (Record, 59.)

The Court, on the 28th of January, 1887, overruled this petition for a deficiency decree, from which order the Insurance Company has appealed to this Court. (Record, 62). There is considerable evidence showing the great depreciation of the premises about the time and during the period of the extension of payment.

ARGUMENT.

First. The proceedings for a deficiency decree, which took place after the sale by the Master, were irregular and void. The Court did not then have jurisdiction of the parties. They were not before the Court. The case had not been continued by the Court.

These parties could only be brought before the Court by a new suit.

Mulvery *v.* Carpenter, 78 Ills. 580.

See Phelps *v.* Loghed, 1 Dillon, 512.

This last case holds that it is discretionary with the Court, under the 92d Equity rule, relating to deficiency decrees, to grant or refuse to grant a deficiency decree.

If this be good law, and it was in the discretion of the circuit court below, the refusal is not reviewable in this Court.

Second. The deficiency decree was properly refused, because the debt of Hanford and Chase was barred by the statute of limitations. (Mich. Ins. Co. *v.* Brown, 11 Mich. 265).

The limitation in Illinois is seven years. (Rev. Stat. of 1872, ch. 83, sec. 16.)

More than seven years had expired before either the deficiency motion or petition was filed. The notes as extended became due Sept. 9, 1875. The motion was not filed until 1886, and the petition until 1887. In either case more than seven years from the maturity of the obligations had expired, and this would seem to be a good reason for refusing to grant the petition. This fact and the fact that Lucy D. Fake had not been notified may have been important factors in leading the Circuit Court, in the exercise of its discretion, to refuse the application for a deficiency decree.

However this may be, the defence that Hanford and Chase were sureties, and that time was given the principal debtor for a valuable consideration, and without their consent, is, we think, complete.

That sureties are released by an extension of time without their consent is elementary law, and we shall not take up time in the citation of authorities upon so plain a proposition.

That Lucy D. Fake, by her assumption of the debt, and her promise to pay the two notes, became the principal debtor, and Hanford and Chase sureties, is also, as we claim, settled law. This rule prevails in England.

Oakley *v.* Pasheller, 10 Bligh N. S. 589, is a decision of the House of Lords and is directly in point. The case is stated in the opinion, and Lord Lyndhurst said :

"The question in this case arose out of a transaction "upon which the appellant claimed in a suit of Sherard "*v.* Sherard, a sum of £10,000 with interest thereon for "a certain period. It appears that the late Sir Charles "Oakley advanced a sum of £10,000 to the firm of Reid "& Sherard, who were at that time in partnership, and the "repayment of that sum of £10,000 was secured by four "several bonds of £2,500 each. Sherard died before any "part of the money was repaid, and a new partnership "was formed between Reid and another person. Reid "and his partner entered into an arrangement with the "personal representatives of Sherard, by which they "agreed to take upon themselves the payment of the "debt, in consequence of certain considerations which "they received, and to indemnify the representatives of "Sherard against it. The name of the new partner "was Kynaston, and he was connected with Sir "Charles Oakley. After some considerable time, an "arrangement was made between Sir Charles "Oakley and Kynaston, without any communication with "the representatives of Sherard, to extend the time of "payment for three years. The time was accordingly ex-"tended, and the question is, what was the effect of the "extension of that time ; whether it discharged the repre-"sentatives of Sherard from their liability ? Now, in con-"sequence of an arrangement which took place between "the representatives and the new partnership, they stood "in the character of sureties ; and the principle of law is "this, that where a creditor gives time to the principal, "there being a surety, without the consent of the surety, "it discharges him from liability, because it places him in "a new situation and exposes him to risk and contingencies "which he would not otherwise be liable to. That being "the fact in the present instance, and as the facts bring "home the knowledge of all the circumstances of the trans-"action to Sir Charles Oakley, it is my opinion, in this

"case, that the representatives of Sherard were dis-
"charged from their liability. That was the opinion
"of the Master of the Rolls, and that was the opin-
"ion of the late Lord Chancellor upon appeal; and, I
"think, under these circumstances, your Lordships will
"be of opinion that these opinions, with respect to this
"point and their decisions, were correct. Under these
"circumstances I should advise your Lordship that the
"judgment be affirmed; and I think, under the circum-
"stances, as the question appears to me to be very clear
"and distinct and unembarrassed, as there have been two
"successive judgments against the plaintiff, that in this
"case the judgment ought to be affirmed with costs."
Decree affirmed with costs.

This rule prevails in Michigan. (Metz *v.* Todd, 36 Mich. 473.)

And in Maryland. (George *v.* Andrews, 60 Maryland, 26.)

And in Louisiana. (Walton *v.* Beauregard, 1 Robinson, 301; Gay & Co. *v.* Blanchard, 32 La. Ann. 503.)

And in New Jersey. (26 New Jersey Eq. 212.)

And in Illinois. (Home National Bank *v.* Waterman's Estate, in Supreme Court of Illinois, decided October 31, 1890, and reported in 25 *Northeastern Reporter*, 551.)

The Court said:

"We understand the doctrine to be that when two persons
"are bound for the same debt and there is an obligation
"on the part of one to exonerate the other in the event of
"payment being enforced against such other, and this is
"known to the creditor, then the creditor cannot extend the
"time of payment to the party ultimately liable without
"discharging the other debtor, even though such other
"debtor occupies the position of a principal debtor to
"the creditor. Millerd *v.* Thorn, 56 N. Y. 402; Colgrove
"*v.* Tollman, 67 N. Y. 95; Walton *v.* Beauregard, 1 Rob.

" (La.) 201; Gay *v.* Blanchard, 32 La. Ann. 503; 1 Jones " Mort., 2d ed., § 741, 742."

And in New York:

Millerd *v.* Thorn, 56 N. Y. 402.
Colgrove *v.* Tollman, 67 N. Y. 95.
Calvo *v.* Davies, 73 N. Y. 580.

And in the text-books:

1 Jones on Mortgages, § 741, 742.

And we think this Court has adopted the same rule in Shepherd *v.* May (115 U. S. 510).

In that case there was no proof that the purchaser, to whom Shepherd conveyed the real estate, assumed or agreed to pay the encumbrance, or that the creditor knew of such an agreement. If there had been, the decision would have been the other way. In the present case, the assumption of the debt was expressly stated in the conveyance, and the creditor had full knowledge of it.

The great weight of authority is with the appellants. The only cases, the other way, are one in Iowa and one in Connecticut.

We submit that they are not entitled to the same consideration as those above cited.

We do not deem it material to show that the extension of time resulted in injury to these appellees, although the evidence shows that fact. A surety has the right to stand upon the letter of his contract. There is no construction, and there are no equities as against a surety. If the new arrangement be for his interest, he is still released.

Treating Hanford and Chase as principal debtors even, and the loss of the security resulting from the depreciation of the property by the delay and extension of time would fall upon this appellant. But we do not put our defence

upon that ground. We claim that the appellees were sureties and are discharged by the well-settled rule that an extension of time to the principal debtor, without the consent of the sureties, is a full discharge of all liability.

We ask for an affirmance of the decree below.

WALTER H. SMITH,
J. H. McGOWAN,
Solicitors for Appellees.